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CIVIL AND POLITICAL RIGHTS, INCLUDING QUESTIONS OF:
TORTURE AND DETENTION

Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant
to Commission on Human Rights resolution 1998/38

Addendum*

Visit by the Special Rapporteur to Cameroon

* The annexes are reproduced in French only.

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Introduction

1. As a result of information received by him in previous years, the Special Rapporteur on Torture of the Commission on Human Rights requested the Government of Cameroon in 1993 to authorize him to conduct a fact-finding mission under his mandate. The mission, which finally took place from 12 to 20 May 1999, enabled him to collect first-hand information from a large number of sources, either orally or in writing. He was thus able to evaluate the situation regarding torture and other ill-treatment in Cameroon and can therefore recommend to the Government a number of measures to be adopted in order to comply with its commitments with a view to putting an end to torture and other ill-treatment.

2. During his visit, the Special Rapporteur met in Yaoundé Mr. Augustin Kontchou-Kouemegni, Minister of State for Foreign Affairs, Mr. Alexis Dipanda-Mouelle, President of the Supreme Court, and Mr. Samson Ename Ename, Minister for Territorial Administration, and also spoke to Mr. Antar Gassagay, Secretary of State for Prison Administration, Mr. Emile-Zephyrin Nsoga, Director for Penal Affairs at the Ministry of Justice, Mr. André Belombe, Director for Military Justice, and other officials of the Ministry. He also met Mr. Luc-René Bell, Delegate-General for National Security, Mr. Emmanuel Edou, Secretary of State for National Defence with responsibility for the gendarmerie and Mr. Jean-Marie Pongmoni, Governor of the Kondengui prison, and likewise Mr. Solomon Nfor Gwei, Chairman of the National Committee on Human Rights and Freedoms, and some other members of the Committee. At Bamenda, the Special Rapporteur met Mr. Robert Ngambi Dikoume, Secretary-General of the Office of the Governor of the Nord-Ouest Region, Mr. Moïse Elanga Ambela, Prefect of Bamenda, Mr. Francis Melone Mbe, Provincial Delegate for National Security of the Nord-Ouest Region, and General Camille Nkoa-Atenga, Commander of the military region. At Douala, he met General Philippe Mpay, Commander of the military region, Colonel Bobo Ousmanou, Commander of the corps of gendarmes, Mr. Rigobert Medzogo Mendzana, Provincial Delegate for National Security of the Littoral region, Mr. Michel Angouind, Government Procurator, and Mr. Daniel Njeng, Governor of New Bell prison. Lastly, at Maroua, he met Mr. Victor Yene Ossomba, Governor of the Extrême-Nord province. In all those places, and also in Bafoussam, the Special Rapporteur visited various places of detention, such as gendarmerie and police stations, and in particular the Yaoundé and Douala central prisons, and met with people claiming to be victims of torture and other ill-treatment and with representatives of some non-governmental organizations (NGOs), in particular the League for Human Rights and Freedoms, Action of Christians for the Abolition of Torture, the Movement for the Defence of Human Rights and Freedoms, International Prison Watch (Cameroon section), Service Humanus, the Human Rights Defence Group, Volunteers for Prison Inmates and the Human Rights Clinic and Education Center.

3. The Special Rapporteur thanks the Government of Cameroon for having invited him and extended full cooperation during his mission, thus making his task much easier. Thanks also go to the Resident Representative of the United Nations Development Programme and his staff for their logistic support.

I. THE PRACTICE OF TORTURE: SCOPE AND CONTEXT

4. In recent years, the Special Rapporteur has received information indicating that a number of people arrested by the forces of law and order, in other words the police or gendarmerie, have been ill-treated and tortured. They were allegedly beaten and struck, often with machetes or wooden or plastic truncheons, and in particular were subjected to the "swing" or "spit" torture, which consists in tying the victim's hands and feet to a wooden or metal rod, suspending the rod and beating the person, particularly on the soles of the feet. The Special Rapporteur has drawn the Cameroonian Government's attention in particular to allegations received by him about arrest and ill-treatment of a number of members of opposition parties during the presidential elections in October 1992 and 1997 and the general elections of March 1992 and May 1997 which brought the Rassemblement démocratique du peuple camerounais (RPDC) to power. Followers of the two main opposition parties in the two English-speaking provinces of the Nord-Ouest and Sud-Ouest and the Extrême-Nord province, namely the Social Democratic Front (SDF) and the Union nationale pour la démocratie et le progrès (UNDP) are said to have been particularly targeted by the mass arrests and ill-treatment (see E/CN.4/1994/31, paras. 71 et seq. and E/CN.4/1998/38/Add.1, paras. 47-48). In addition, the Special Rapporteur transmitted to the Government information about poor detention conditions in most of Cameroon's prisons, endangering the health and even the lives of the detainees. The various detention centres were also reported to be overcrowded, with non-existent or inadequate sanitary and medical facilities and insufficient food provided by the authorities (see E/CN.4/1999/61, paras. 101 et seq.).

5. During his mission, the Special Rapporteur received information from non-governmental sources and a very large number of accounts by witnesses, of which a selection is reproduced in the annex to this report, indicating that torture is widespread and used indiscriminately against many people under arrest. Women, children and elderly people are also reported to be subjected to ill-treatment. However, it appears that most cases are not reported to the relevant authorities because of ignorance, lack of confidence or fear of reprisals on the part of the victims and their families. According to this information, members of the forces of law and order, in other words the gendarmerie, and the police, and a third category of forces, the military, when they are involved in upholding law and order, use various types of torture and ill-treatment. Besides the "swing" torture and the various types of blows inflicted on victims, it was reported that detainees had received gunshot wounds, particularly in the legs, and had had burns inflicted on them. The purpose of those acts was allegedly to extract confessions or to punish or intimidate individuals suspected of having committed crimes or of belonging to opposition parties or other social categories such as journalists or human rights defenders. A number of deaths resulting from torture were also reported. On the subject of levels of responsibility, many non-governmental sources indicated that some of those incriminated act out of ignorance and others out of pure habit, for they have regularly acted that way for a long time without fear of any consequences. However, they recognized the Government's recent resolve to end those practices, even if the steps taken are still greeted with caution.

6. All the officials interviewed admitted that cases of torture and other ill-treatment might have been common in the past, as was noted by the Human Rights Committee in 1994.¹ Everyone, particularly the Minister of State for Foreign Affairs, also emphasized that Cameroon was in the midst of changes which were supported not only by the President and Government but also by the Cameroonian people. The Minister explained, however, that, while the legislation in

force in Cameroon since what was generally known as the "freedom session" of the National Assembly (1990) guaranteed the basic rights and freedoms enshrined in various international and regional instruments, the task of creating a genuine human rights culture, not only among the forces of law and order but also among the public, still lay ahead. The Special Rapporteur noted the desire of all officials whom he met to improve the human rights situation in Cameroon, particularly in the area of his mandate.

A. The police forces

7. During his mission, the Special Rapporteur visited several detention centres under police authority. In almost all the cells visited the inmates were dressed only in their underwear, which according to the authorities was justified by the need to prevent detainees committing suicide. In the men's cell at the Bamenda criminal investigation service unit, the Special Rapporteur noted that the windows had no glass, a shivering prisoner who had arrived recently complained of the cold during the recent nights. Many accounts also seemed to indicate that the practice of keeping prisoners half-naked throughout their detention, including during questioning, had the additional purpose of humiliating them, some detainees were left in police station corridors in their underwear for all to see (see especially annex II). The Delegate-General for National Security confirmed that the practice of removing prisoners' clothes dated from the colonial era, but said that measures had been taken to put a stop to it.

8. None of the cells visited contained furniture, except for the occasional straw mattress provided by the prisoners themselves, as was the case at the criminal investigations department unit in Yaoundé, hence detainees slept mostly on the bare concrete floor. The absence of mattresses was justified by some, including the Douala Provincial Delegate for National Security, by the fact that people were held at police stations for only a short time, during questioning and preliminary inquiries. It should be noted here that most of the cells visited were relatively clean. However, with rare exceptions, one of which was the public security authority unit at Bamenda, the Special Rapporteur found the sanitary facilities to be unhygienic, consisting mainly of latrines and a tap. These were generally separated from the cells, but according to the detainees they were accessible either directly or on demand. At the Bamenda criminal investigation service unit, the latrine area was also used for showers. At the service's Yaoundé centre, the Special Rapporteur's team saw a young detainee, his hands protected by plastic bags, emptying excrement from the latrines through a hole at the top of the outside wall.

9. As to custody conditions, the Special Rapporteur can only agree with a division superintendent who said at the seminar on improvement of arrest and custody conditions organized by the National Committee on Human Rights and Freedoms in December 1998 that the cells used are universally appalling, they are cramped, dirty, poorly lit and inadequately ventilated.² The superintendent also emphasized the urgent need to provide the police with resources in order to provide food and medical care for people in custody, particularly street children and individuals without relatives in the town of detention.

10. According to the various authorities encountered during visits to police stations, minors are separated from adults and women from men. At the Bamenda criminal investigation service unit, a very young-looking detainee among the adults said that he was 14 years old; the officer in charge of the centre later denied this, but was unable to prove his claim. At the Yaoundé

criminal investigation service unit, the authorities at first claimed that the two women currently in custody were held in a separate cell from the men; however, the Special Rapporteur's team noticed that one of the two women was being held with the men at the time of the visit, and she confirmed that she had always shared a cell with the men. The second woman slept with her nine-month-old child on a straw mattress in the entrance lobby of the police station (see annex II). The guards, when questioned, eventually said that the women could choose between sharing a cell with the men or sleeping in the hall. As to the fact that an infant was being held with its mother, the guards said that the child had been with her when she was arrested and she had been unable to arrange for its care.

11. During the visit to the Douala tenth district police station, the Special Rapporteur asked to see the register of persons in custody. The Douala government procurator had stated that he regularly received custody lists for the various places of detention in order to be able to verify the lawfulness of detentions at a distance, since resources did not permit him or his assessors to visit the facilities. The Special Rapporteur saw that the register began on the day of his visit, 15 May 1999, and indicated that four people were in custody; however, a few minutes earlier, a member of his team had noticed that the register contained only three names. The Special Rapporteur then asked to see the previous register; the deputy superintendent, visibly very nervous, was unable to produce it because it was locked in the office of the superintendent, who had been away since 11 May. Thus, no custody record appeared to have been kept since that date. One of the people in custody said that he had been arrested for receiving stolen goods on 11 May, which matched the register. Hence, his five days of detention could not have been reported to the procurator, who could therefore not have ordered extension of his custody. Despite the insistence of the Special Rapporteur and the Provincial Delegate for National Security, who was present at the time, it was not possible to consult the previous register. The Provincial Delegate assured the Special Rapporteur that he would take the requisite measures. The Special Rapporteur also noticed that no activity took place in that police station, in a busy district, throughout his visit on a Saturday evening. Finally, on Monday 17 May, the Provincial Delegate presented the Special Rapporteur with the previous custody register, to which pages had clumsily been added containing an account of custody from 11 to 14 May. Concerning that incident, the Special Rapporteur is firmly convinced that the refusal to show him the real custody register was an attempt to hide something.

12. On visiting the Yaoundé criminal investigation service unit, the Special Rapporteur's team noted that the vast majority of those in detention had been tortured and, in particular, struck with machetes. They still bore the marks, often fresh, of such ill-treatment, particularly on their feet, legs, arms and back; some also had open wounds, apparently caused by machetes. Some detainees said that, upon being transferred to the Yaoundé unit, they had complained of their treatment in the police stations where they had been held prior to that, and had received the reply that torture was no longer practised in Cameroon. They stated that none of them had received any medical care, with the exception of one (whose name is known to the Special Rapporteur) who said that he had been struck with a machete on the shoulders and with the butt of a firearm on the head, causing heavy bleeding. He had been taken to his parents, who had been allowed to bring him, escorted by a police officer, to a clinic; there he had received stitches, which were still visible when he was interviewed. Additionally, one of the detainees had very recently had all his toenails ripped out, and another, who had been shot in the foot and the knee two months earlier, had still received no attention. Almost all the detainees at the centre were unwilling for the

Special Rapporteur to publicize their accounts because they were afraid of reprisals. They said that the purpose of the ill-treatment was to extract confessions. Some said that they had signed statements against their will.

13. When, at his meeting with the police chiefs, the Special Rapporteur asked whether they were aware of abuses by their subordinates, all replied initially that the police forces assisted the procurators and were therefore under their supervision; thus, the procurators were presented as guarantors of police officers' good conduct. The Bamenda provincial delegate for national security said that, since his appointment eight months earlier, no cases of abuse by his subordinates had come to his attention. However, he assured the Special Rapporteur that, should such cases arise, the guilty parties would be punished immediately. He also explained to the Special Rapporteur that he had a number of assistants responsible for monitoring the various detention units under his jurisdiction and that everything possible was done to ensure the comfort of detainees. The Douala provincial delegate for national security said that, since his appointment in September 1998, there had been a few cases of misconduct by his subordinates, those cases had been investigated and disciplinary action taken. There had been one report of ill-treatment, but it had not been corroborated by the subsequent inquiry. He concluded that such cases must not have occurred in his jurisdiction since the Cameroonian public knew perfectly well to whom it could complain, that is, to the divisional superintendent or to his fourth assistant, responsible for civil security and investigation of police officers, and that he was not aware of any such complaint being lodged.

14. The Delegate-General for National Security told the Special Rapporteur that he was aware of the work that remained to be done in terms of educating the police in human rights and changing mentalities shaped in the previous era (1966-1990) and the transitional period, when the use of force had been widespread. He explained that the police institute's training courses had now been altered to include a human rights dimension, police officers' working conditions were also going to be improved. He also said that financial and material efforts were being made to renovate some cells, which he agreed were stifling. Besides ventilation, running water and mattresses were on the list of priorities. He emphasized that the police needed to demonstrate probity and that there could be no condoning lapses by the forces of law and order, hence, any misconduct was punished. If the offence was liable to criminal proceedings, a superintendent of the criminal investigation service was placed in charge of the investigation and, where appropriate, the individual in question was referred to the prosecution service. The police force also had a disciplinary board whose ultimate sanction was dismissal of the officer concerned. The Special Rapporteur was not provided with any statistics on disciplinary action against police officers, despite his requests. Finally, he was told that the civil population also needed to be educated not only in its rights but also in the remedies available should those rights be violated.

B. The gendarmerie

15. The Special Rapporteur also visited places of detention under the authority of the gendarmerie. The previous general comments concerning detention conditions in police facilities also hold good for the gendarmerie. At Douala, the Special Rapporteur visited the investigations squad. Six people, deemed not to be dangerous, were in the office of the superintendent. Two people had been in detention in the cell in the centre of the courtyard since the previous day. The cell was small (approximately 1.5 m by 2 m), with a wooden floor under

which cockroaches, ants and other insects swarmed. It was lit at all times by an electric bulb and was very poorly ventilated, with air entering only by a small opening above the door. The temperature was stifling on the day of the visit. The adjoining cell was identical in all respects but belonged to the Littoral squad and contained two detainees who had been there for five and four days respectively. They said that they had still not been brought before the prosecution service, even though their questioning appeared to be over, and they did not know under what arrest warrant they were being held. They informed the Special Rapporteur that, since they had arrived, there had been an occasion when seven people had been held together in that small cell, making it extremely hard to breathe and impossible to lie down. The Special Rapporteur heard later that, while he was in the superintendent's office at the beginning of his visit, detainees had been removed from the two cells in question, though he was not able to verify that information.

16. The Special Rapporteur also visited the "anti-gang" cell of the Yaoundé gendarmerie, known as the "Lake Squad". It was approximately 4 m by 1.5 m in size and very dark, with only a small amount of light entering through a tiny opening above the door. Ten people were inside at the time of the visit, but they said that there had been 16 the previous night. The authorities confirmed that six other detainees were carrying out public work outside. Hence, the detainees had taken it in turns to try and sleep, either standing or sitting down. The detainee who had been in the cell the longest - over a month - said that on one occasion 23 people had been held there at once. When the door was shut, the Special Rapporteur experienced the heat, literally suffocating, of the cell. The detainees said that they were not allowed to leave the cell every day for personal hygiene and had to relieve themselves in plastic bottles and bags which they threw outside. The Special Rapporteur was able to see that this was true.

17. Most of the detainees had recent serious bruises and marks from machete and lash blows. They claimed that they were regularly beaten and subjected to the "swing" torture to force them to confess. In one of the interrogation rooms, the Special Rapporteur found machetes casually hidden under a bag, and he found a large number of belts in another room. The gendarmes, when asked, said that they were items of evidence, but none of them carried an identifying label such as to convince the Special Rapporteur that this was true.

18. According to the military regional commander and the gendarmerie commander at Douala, there had been no case of torture or custody exceeding the statutory period since their appointment seven months earlier. The procurators monitored the lawfulness of detentions and extended them where necessary; registers were updated daily for that purpose. The Douala gendarmerie's fight against crime was also claimed to have the purpose of referring suspects to the prosecution service as quickly as possible. The only complaints recorded against the gendarmes were said to concern cases of corruption. Once again, the two commanders stressed the need to educate their staff in human rights following the advent of democracy. They also indicated that, since the media were ready to report and even exaggerate the slightest incident, the forces of law and order needed to avoid any questionable situation and ensure that their conduct was blameless. It was again emphasized that the gendarmes, like the police, assisted the procurators, who supervised and monitored them.

19. The Secretary of State for National Defence with responsibility for the gendarmerie told the Special Rapporteur that certain units under his authority were located in regions very far from the capital, and consequently the reforms of recent years had perhaps been difficult to

implement in those units. He also said that the ultimate sanction for misconduct by subordinates, namely dismissal, was not always an option for the authorities. The recruitment freeze which had been in force for some years and the current staff shortages within the gendarmerie could make it difficult to be rid of troublesome officers. The Secretary of State also emphasized that in his opinion the procurators did not make enough visits to places of detention in order to verify the lawfulness of custody.

20 It should be noted here that the overwhelming majority of people detained by the police and gendarmerie and interviewed by the Special Rapporteur did not know either why they were in custody or what authority had ordered it to be extended. Almost none was familiar with his rights, particularly relating to defence by a lawyer, or with judicial procedures, all had been questioned and had signed confessions or statements, with the wording of which they did not always agree, and this had taken place without the presence of a lawyer. Very few had been brought before a procurator. Some remained in detention without referral to the prosecution service even though they had signed a declaration admitting the offences attributed to them. For example, a detainee at the Douala tenth district police station informed the Special Rapporteur that during his interrogation he had been told to sign a statement with whose wording he did not agree as a condition of referral to the prosecution service. Supported by many eyewitness accounts, the NGOs claim that victims of torture and other ill-treatment, particularly during custody or pre-trial detention, do not know the procedures for lodging a complaint. Many victims do not dare to complain or make statements, even to the NGOs, which all emphasized the issue of education and information.

C. The Maroua "anti-gang" unit

21 Before his mission³ and when in Maroua, the Special Rapporteur received information about a special anti-gang unit led by a Colonel Pom which is responsible for combating the armed highway robbers who attack, rob and kill travellers in the north of the country. The anti-gang unit is apparently arbitrarily detaining, torturing and summarily executing people suspected of being highway robbers or of having information about highway robbers (see especially annex II). In certain cases, there also seem to be a settling of personal scores and false denunciations; according to the information, the anti-gang units show little concern for investigations and lack of evidence. The special unit was reportedly sent to the Nord and Extrême-Nord provinces in March 1998, composed of some 40 members of the army and the gendarmerie, dressed in civilian clothing and heavily armed, it is active in the three northernmost provinces. The unit allegedly acts outside the law and with total impunity. Moreover, there appears to be a climate of fear in the region, which explains the fact that relatives of victims do not dare complain for fear of reprisals. The regional governor and the military commander of the Extrême-Nord region have reportedly stated on several occasions that they have no authority over Colonel Pom and his men. The staff of the main NGO at Maroua, which collects information on the unit's exactions, have allegedly been subjected to threats and intimidation by anti-gang personnel on several occasions. For example, on 7 May 1999, they learned that an ambush had been set up on a road to prevent them from travelling to a location where the bodies of some 15 people apparently executed by the unit had been discovered. Additionally, a photographer from Maroua who had been providing this NGO with photographs of the bodies of execution victims reportedly disappeared at the beginning of 1999.

22. The Special Rapporteur, on the basis of information received from a number of sources, visited a private house on the outskirts of Maroua, surrounded by a perimeter wall covered with shards of glass. The information had indicated that it served as a detention centre for people arrested and interrogated by the anti-gang unit. The Special Rapporteur's delegation, which included a divisional superintendent, asked to be admitted to the building. Two men, dressed in civilian clothing and armed with submachine guns, replied that they could not admit the delegation without express authorization by Colonel Pom. At no stage did they deny that they were members of the anti-gang unit or that people were detained in the house. They appeared very calm and sure of themselves and of their right to refuse access to the Special Rapporteur. While part of the delegation waited outside the house, the other members went to see Colonel Pom, led by a four-wheel drive vehicle of the anti-gang unit. Colonel Pom, though aware of the Special Rapporteur's mission, refused to come and meet him in front of the building. He also refused to have the house opened, claiming that he had first to check with his superiors in Yaoundé and that he was unable to contact them immediately. That was later officially denied. The divisional superintendent accompanying the Special Rapporteur's delegation showed him a letter from the Secretary of the Office of the President asking all authorities to grant the mission all necessary aid, including access to places of detention. The director of the international organizations department, the contact at the Ministry of Foreign Affairs, said when telephoned by a member of the Special Rapporteur's delegation that the Special Rapporteur could only note Colonel Pom's refusal.

23. According to the Secretary of State for National Defence with responsibility for the gendarmerie, the activities of the Maroua anti-gang unit, which belongs to the so-called "ministerial reserve" or the multi-disciplinary gendarmerie intervention group (GPIG), is, although under his administrative authority, supervised directly by the Minister of State for Defence and the President of Cameroon. This "ministerial reserve", based in Yaoundé, has the role of reinforcing the forces of law and order when public disturbances outstrip local capacity, as is the case in the north of the country because of the presence of the highway robbers. He said that he was not aware of Colonel Pom's refusal to open the house. He also appeared surprised that the Special Rapporteur had received information about the Maroua anti-gang squad detaining people, since they had only an operational capacity, i.e. reinforcing the forces of law and order in the three northern provinces. The Secretary of State said that the unit therefore did not have the power to conduct investigations or detain people, he admitted that Colonel Pom's anti-gang forces did have inordinate powers, but said that if appropriate he could take disciplinary action against them and that the government procurator had the power to institute criminal proceedings against them. In connection with a case of extortion of money relating to stolen cars, a number of members of the unit had been disciplined and were the subject of ongoing criminal proceedings. He confirmed that orders had been given to all units to let nothing interfere with the course of the Special Rapporteur's mission and that Colonel Pom had the authority to let him into the house concerned. The Special Rapporteur firmly believes that he was not allowed into the building to prevent his seeing evidence corroborating the allegations which he had received concerning the treatment of the people reportedly detained there.

D. Prisons

24. It is not within the mandate of the Special Rapporteur to describe and analyse detention conditions exhaustively. In the case of Cameroon, where the International Committee of the

Red Cross has recently signed an agreement with the Government allowing it to make regular visits to all places of detention, the Special Rapporteur did not consider the situation in the prisons to be one of his priorities. However, as with his visits to other countries, he took the opportunity while in Cameroon to visit the central prisons at Douala and Yaoundé, mainly in order to meet people who could testify to the treatment which they had received before being transferred to prison.

25. Already in 1994, the Human Rights Committee noted that detention conditions in Cameroon were often insalubrious and that cases of torture existed.⁴ According to the information received before the mission, prisoners, most of them unconvicted, are held in conditions endangering their health and even their lives and representing inhuman or degrading treatment. Overcrowding, unhygienic sanitation, lack of health care and shortage of food are reportedly the main failings in the Cameroonian prison system. Those conditions cannot be blamed only on lack of financial or material resources, but also result from deliberate policies or serious neglect on the part of the relevant authorities.⁵ According to NGOs, minors held in those prisons are subjected to sexual abuse by guards and other prisoners and are forced to carry out other prisoners' chores under threat of a beating. Article 29 of the Cameroonian Penal Code provides, however, that minors aged under 18 should serve custodial sentences in special establishments.

26. The Special Rapporteur visited the New Bell central prison at Douala on 16 May 1999. According to the latest census, carried out on 14 May, there were 2,393 people, including 1,604 in pre-trial detention, being held in the prison, 1 hectare in area and designed to hold 800. While it is officially divided into several sections for different categories of prisoner (to house convicted and unconvicted prisoners, as well as minors and adults, separately), in reality it is an open space within which the prisoners are free to pass from one section to another, though the prison governor claims that prisoners sentenced to death, women and minors remain within their own sections. Additionally, most detainees, especially those serving long sentences, live in makeshift shelters, named "kitos", built with the guards' help in the middle of the central courtyard. The governor claimed that it was the only prison in Cameroon where the lack of facilities had led to this solution involving "kitos". While a roll-call takes place every evening in each section, it is physically impossible during the day to separate convicted from unconvicted prisoners. There are 65 full-time guards, responsible for supervision and discipline. The showers and toilets seemed insalubrious to the Special Rapporteur and allow for no privacy as the toilets have no doors and the showers are in the open air. The detainees said that, until a recent visit by the International Committee of the Red Cross, they had had to pay to use the toilets. The governor stated that the detainees received one meal a day, consisting of beans, maize and palm oil; women, minors and condemned prisoners also received rice.

27. The Special Rapporteur visited a cell containing about 10 wooden bunks with straw mattresses, in which, according to the detainees held there, some 140 people were housed every night. Only 90 people could fit on the bunks, and the rest had to sleep on the bare floor or in the adjoining yard when the weather was fine. They said that it was very difficult to breathe at night; air entered mainly through the cell door, which was left open. The Special Rapporteur noticed that other cells were the same in that respect.

28 The Special Rapporteur noted that the sick bay, with an observation room containing four beds, was very basic. The nurse told him that the supply of medicines was totally inadequate, and also emphasized that it was difficult to transfer serious cases to the hospital, since it only accepted patients able to pay for their treatment and made it a condition that a guard should be posted to the hospital to mind sick prisoners. The governor confirmed that the prison only had a budget for medicine, not for sending prisoners to hospital. The lack of care was such that a child thought by the governor to be suffering from tuberculosis had died that morning. The Special Rapporteur then visited the section housing sick prisoners, particularly those with tuberculosis, and noted that the conditions were deplorable and insalubrious. Since the beginning of the year, according to figures supplied by the governor, 30 prisoners have died at New Bell (see especially annex II).

29 The Special Rapporteur visited the minors' section, which contained 42 children on 22 beds. The youngest child said that he was 12 years old and had been hit on the head with a machete at the police station where he had been questioned. It is a fact that he had a recent scar on the top of his head. Most of the minors interviewed had been arrested for theft and said that they had signed statements after being hit with machetes or lashes or being threatened.

30 The women's section contained 27 prisoners, including 6 minors, on 25 beds. Their material situation seemed much better than that of the men. Most had been in pre-trial detention for many months. They did not complain of ill-treatment while in custody or pre-trial detention in the police or gendarmerie stations where they had been arrested.

31 Several prisoners complained of ill-treatment by the guards, especially following an attempted escape (see annex II). They said that the ill-treatment had been inflicted on the orders, or at least with the consent, of the governor. The governor admitted having ordered a beating in at least one case, in order, he claimed, to save the detainee from retribution by the guards (see annex II).

32 The Special Rapporteur also visited the Kondengui central prison at Yaoundé on 19 May 1999. At the time, 2,700 people were being held there, including 2,550 in pre-trial detention, the prison's official capacity is 800. While stressing the recent improvement in detention conditions, the governor then said that the main problem was overcrowding. This is exemplified by the fact that the prison has only 16 toilets and showers. The governor said that part of the overcrowding problem could be resolved by transferring inmates to prisons elsewhere in the country, he could not do that, however, while the individuals were under investigation by the Yaoundé prosecution service. The governor also said that the procedure involved often took too long and that the length of pre-trial detention made it difficult for him to house detainees in acceptable conditions.

33 Unlike New Bell, Kondengui prison strictly separates the different categories of prisoner. The Special Rapporteur noticed that women prisoners, held separately from the men, are accompanied by female warders when attending men's sporting activities in the central courtyard. Each section is administered by certain detainees, who act as go-betweens for communication between the detainees and the guards, in particular, the minors are looked after by adults, who, according to the governor, apply on his instructions quite strict discipline in

order to re-educate them. Regarding this system of self-surveillance, some detainees told the Special Rapporteur that there were prisoner "squads" which laid down the law in the governor's name and were not afraid to use strong-arm methods, but none of the prisoners was willing to speak openly about the system for fear of reprisals. The governor flatly denied that such disciplinary prisoner teams existed and said that the system involved giving responsibility to prisoners by appointing a head of cell and a head of section who worked directly with him. He also stated that when they used violence or overstepped their authority, they were stripped of their positions.

34 The governor also emphasized that, as a result of disciplinary action and training, his staff had been made aware of its responsibilities and that cases of abuse of authority had declined sharply. He explained to the Special Rapporteur the system which he had set up for the disciplining of prisoners, whereby he listened to the version of events of the officer responsible for discipline and of the prisoner and himself decided on the punishment, which could range from banning visits for a few days to sending the prisoner to the punishment cell (for a maximum of 15 days) or assigning him to the most unpleasant tasks, such as those involving the sanitation. The governor stressed that his staff were thus authorized only to note and report prisoners' misdeeds. He told the Special Rapporteur that he had established a large number of social, cultural and sporting activities, and had set up educational discussion sessions at which the detainees could criticize their environment and supervision. He showed the Special Rapporteur his projects, including a "prisoner week" designed to raise public awareness of the problems of prison life.

35 The Special Rapporteur visited several cells. The first was in very good condition and contained 12 beds for 12 prisoners; the rules established by the prisoners of that cell themselves were very strict, according to the governor, which explained why there were so few prisoners. The next cells contained respectively 42 prisoners to 15 beds and 40 prisoners to 14 beds; the inmates explained that most slept on the bare floor and that the beds were reserved for those who had been there the longest. The governor said that there were approximately 400 beds for 2,700 prisoners. The Special Rapporteur then visited death row and the women's section. The material situation there appeared much better than in the previous sections. In particular, there was no problem of overcrowding. Information from a non-governmental source states that the prison is divided into several sections according to social category and in reality according to detainees' financial resources. Detention in a special section requires payment of a sum which depends on the section's salubrity and organization.⁶ The prisoners themselves said that everything was up for negotiation inside the prison.

36 The Special Rapporteur visited the two so-called "screening cells" temporarily housing new arrivals: they were devoid of furniture, a fact that the governor justified by saying that the prisoners stayed there for one night only. When questioned, some of the inhabitants said, however, that they had been there for two or three days. The second cell, almost pitch dark, contained three totally naked men, huddled up and in a clear state of shock: they were accused of the killing of a member of the forces of law and order and had just arrived at Kondengui prison after two weeks of interrogation by the gendarmes. The governor, on being questioned by the Special Rapporteur, who did not conceal his consternation at the sight in that cell, said that he had not been aware that the three men were there in that state; he added that the order to undress

them must have come from a guard, and immediately gave instructions for clothes to be issued to them. He told the Special Rapporteur that he would take steps to punish the guards responsible. He admitted that there were sometimes problems of hierarchical communication and that consequently he was not always aware of what was happening in the various cells. He claimed nevertheless to carry out a daily round when he had the time.

37. The punishment cell, which was very dark and stifling, contained 23 detainees and was obviously overcrowded. The prisoners said that, since being brought there, they had never left the cell, and had to relieve themselves in plastic bags or bottles. Two or three who were obviously weak and in poor health remained lying on the floor throughout the Special Rapporteur's visit. Several of the prisoners said that they had been in the cell for more than 15 days, which the governor had claimed was the maximum stay. Additionally, most did not know how many days their punishment was supposed to last. One said that the punishment for fighting was 30 days in the punishment cell. On return to the governor's office, it proved impossible to consult the disciplinary register indicating the grounds and length of punishments because the head of the discipline office was absent. The governor admitted forgetting one prisoner who should have been released from the punishment cell three days earlier. The prisoner, who was condemned to death and had recently been transferred from Tchollire prison to Kondengui, had been punished for sawing his foot-shackles without the governor's permission. Indeed, as the NGOs have emphasized, condemned prisoners are chained by the feet in most prisons, Kondengui being one of the exceptions.

38. During his mission, the Special Rapporteur also received information concerning Garoua central prison. Reportedly it consists of six cells covering approximately 72 km², each containing 100 to 150 prisoners, who take it in turn to sleep on the beds, and some prisoners have died there of suffocation, exhaustion or hunger. An alleged punishment consists of making prisoners enter the pit latrines, causing dermatosis which is fatal if not treated. According to certain sources, from 1997 to 1998 three to seven prisoners died every day. However, the same sources said that the situation had improved since the appointment of a new governor in 1998. Non-governmental sources stated that some prisons, including Kumba and Messamena, had no toilets, but only pit latrines.

39. On the subject of prison overcrowding, the Special Rapporteur was informed that the Chancellery of the Ministry of Justice had issued circulars instructing that detention should be carried out during investigation only where absolutely necessary. Pre-trial detention is thus intended to be an exception, though it was recognized that conditional release was still badly received by the public, largely because of the problem of corruption. Greater attention to the question of whether an individual needs to be detained pending trial should therefore reduce the prison population substantially. In addition, the NGOs interviewed stated that a large number of detainees were being held for civil offences. Another circular had been sent to government prosecutors to ask them not to keep suspects in pre-trial detention for longer than one year, or six months at Yaoundé and Douala: all suspects were to be brought before a judge during that time. Procurators were also recommended to visit prisons regularly in order to monitor the pre-trial detention situation, according to the information received, that is not the case. The officials who met the Special Rapporteur at the Ministry of Justice said that certain prisons in the provinces were empty, even though the prison-building programme had not kept pace with recent demographic trends and the accompanying increase in crime. It should also be noted that

separation of children from adults and unconvicted prisoners from convicted prisoners, despite being provided for in article 20 of Decree No. 92-052 of 20 March 1992 on the Cameroonian prison system, is not respected

40 A number of other points deserve attention in connection with prison conditions.⁷ The Decree of March 1992 provides that "prisoners shall be entitled to a daily meal. This should be balanced and sufficient to avoid dietary deficiencies and provide prisoners with the energy required for health..." (art. 29). Most of the prisoners interviewed said that the meal, while daily, fell far short of meeting their needs, most, however, received food from their families and shared it with fellow-prisoners whose families were too far away to help. The Minister for Territorial Administration did say, however, that any prisoner could request a transfer to a prison close to his home in order to be able to receive food from his family. Regarding sleeping arrangements, "all convicted prisoners [...] shall have a bed with a mat, a blanket and where possible a mattress and pillow" (art. 30), the Special Rapporteur noted that the vast majority of prisoners did not have a bed, most sleeping on straw mattresses on the floor. Article 30 further states that "all convicted prisoners shall receive a uniform which they shall be required to wear in public", this was also not the case. Lastly, article 32 provides for all new prisoners to undergo a medical examination when admitted to prison, once again, the Special Rapporteur noticed that many recent arrivals from police and gendarmerie stations had not received the medical attention warranted by their state of health, which he found to give cause for grave concern in some cases. Many recent arrivals had open wounds, some suppurating, apparently their requests for medical attention had been refused. The governor of Kondengui prison admitted that some prisoners arrived with gunshot wounds, but lack of funds or medical personnel meant that they received no care. Prisoners' general state of health appears quite poor: many have skin diseases or digestive problems. The prison regulations provide for training and leisure activities, but the prisons lack the facilities and staff. According to the information received, no prison in Cameroon has visiting rooms where prisoners can converse in private with their families or lawyers.

41 Article 320 of the Cameroonian Penal Code prescribes the death penalty for certain crimes, including premeditated murder, acts of violence against public servants with intent to kill, and aggravated theft. Act No. 90/061 of 19 December 1990 amended the Penal Code, particularly in respect of the last point, establishing that only theft with violence causing death or serious injury is liable to the death penalty. Until 1997, when an execution was carried out at Mokolo, no executions had taken place in Cameroon since 1988. The information received stated that over 100 condemned prisoners were currently held in Cameroonian prisons, particularly at Yaoundé, Douala, Garoua, Dschang and Tcholliré. It appeared that they were held in chains, except at Yaoundé and Douala. This was confirmed by the Kondengui prison governor in respect of a prisoner recently arrived from Tcholliré. A condemned prisoner at New Bell also said that he had been held in chains from August 1995, following his arrest at Njombe and imprisonment at Komikssaba, until he was transferred to New Bell at the beginning of May 1999. At the time of the Special Rapporteur's visit, marks were still clearly visible on his ankles. The reason given for using chains was the absence of high-security prisons in Cameroon and the need to control these dangerous prisoners. Most condemned prisoners bore the marks of wounds which they said they had received in pre-trial detention, when they had been questioned and beaten. Years later, some still had serious wounds which had not yet healed. In particular,

two condemned prisoners at New Bell (whose names are known to the Special Rapporteur) had suppurating wounds: the first had received burns five years earlier when in detention at the Douala military engineers' facilities and the second had been shot in the leg while being arrested by a police officer at Douala.

42. Some of the prisoners interviewed had been condemned to death at the end of the 1970s or the beginning of the 1980s, but had never had their sentences commuted to imprisonment for life or 20 years. Others had been convicted of aggravated theft without violence and did not understand why their sentences had not been commuted since the amendment of the Penal Code, although they knew that the 1990 Act was not retroactive. The Special Rapporteur would emphasize, however, that article 15 (1) of the International Covenant on Civil and Political Rights, to which Cameroon is a party, provides that "If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby". The condemned prisoners at New Bell also did not understand why Decree No. 92/254 of 28 December 1992 providing for the death penalty to be commuted to a 20-year sentence had been interpreted by the prison authorities and the Douala prosecution service as meaning that the balance of the sentence was reckoned as beginning from the date on which the decree was signed and not the date of the warrant committing them to prison. Hence, the number of years already spent in prison is not taken into account in calculating the 20-year sentence. The uncertainty of their fate appeared to worry some, while others said that they were resigned to awaiting execution or spending their lives in prison. Their conditions, especially as regards overcrowding, seemed relatively good as compared with those of other prisoners. Many condemned prisoners complained about the slowness of judicial processes, particularly appeal procedures, and the non-existence of cassation in reality; some even complained that their file had been lost at appeal.

43. On 13 May 1999, the Special Rapporteur visited Bafoussam provincial hospital, where, according to his information, some prisoners were receiving medical care. The first ward which he visited contained six prisoners, who said that they were suffering from tuberculosis: they were chained in pairs to their bed by the feet, leaving them very little freedom to move. Two of them had apparently been held in those conditions for four months, two others for two months, one for one month and the last for one week. They said that their tuberculosis treatment would last for six months. A guard was supposed to come and unchain them at 7 o'clock every morning to allow them to go to the toilet, but, according to them, he did not come every day. Otherwise, they had to relieve themselves in plastic bags or bottles, which could be seen by the Special Rapporteur. The small amount of food available to them had been brought by the families of those who lived locally. The second ward contained six more prisoners, including a child of 16, each chained to his own bed, and a seventh, unchained prisoner responsible for buying food for the others; he had been in the hospital for 22 months, waiting for funds to allow his transfer to Yaoundé for an operation on his obviously swollen cheek. Most had been given no medicines and did not know exactly what was wrong with them. On returning to the hospital reception area, the Special Rapporteur asked to speak to the doctor in charge of the wards or to any other responsible person in the hospital and was told that nobody was present. The Special Rapporteur found the state of health of all these prisoners to be very worrying and urgently requiring appropriate care.

E. Traditional chiefs

44 The Special Rapporteur received much information to indicate that traditional chiefs, known as lamida or sultans according to the area, were the instigators of arbitrary detentions and ill-treatment, particularly with respect to their political opponents (see in particular annex II). This was said to occur above all in the north of the country, where these chiefs' traditional power continued to play an important role in society. A good deal of the information concerned the lamido of the Rey-Bouba in Mayo-Rey region, who retained considerable power and had a personal guard, justified by the prevailing insecurity in the region. The governmental authorities stated, however, that there were no places of detention in Mayo-Rey under the authority of that lamido. Non-governmental sources nevertheless indicated that certain people, especially political opponents, had been arrested and detained in private prisons within the palace compound. Other lamida were said to act similarly (see especially annex II). Additionally, it was reported that the forces of law and order acted on the instructions of certain traditional chiefs, arresting and ill-treating people indicated by the chiefs, often political opponents (see especially annex II). The Minister for Territorial Administration explained that the lamida were only supposed to act as a link between the Government and the public, and certainly did not have the authority to arrest, detain or try people; the Minister told the Special Rapporteur that if such cases arose, he would intervene immediately. The Minister for Foreign Affairs also confirmed that the central Government exercised its authority throughout the territory of Cameroon, contrary to some suggestions, and the areas under the authority of lamida were therefore not enclaves beyond the rule of law. The Minister for Territorial Administration emphasized the importance of education, which not only reduced the lamida's influence on the local people, but also led the lamida themselves to behave in a manner more appropriate to the rule of law. Nevertheless, when they overstepped their authority, the Minister, to whom they were subordinate, could summon them to call them to order, while the chiefs were appointed according to local tradition, their appointment had to be approved by the Ministry of Territorial Administration.

45 According to some non-governmental sources and accounts, it is very difficult, if not impossible, to take legal action against traditional chiefs because of the status and protection they enjoy; in particular, the chiefs do not respond to summonses from the prosecution service. The Secretary of State for Defence with responsibility for the gendarmerie asserted that detention warrants issued by a procurator were always carried out, though he recognized that for traditional reasons certain chiefs were feared and respected. According to him, a detention warrant can be executed if the necessary forces of law and order are mustered.

F. Use of force by the law enforcement services

46 According to the information received, the law enforcement services have on several occasions used excessive force, especially in the handling of demonstrations by the political opposition in the run-up to elections. Some demonstrators are reported to have been seriously injured, including by bullets, and some even to have died from their injuries. Explosive grenades were also reportedly used in some cases. The military, called in as reinforcements, are also said to have used force (see especially annex II). The Special Rapporteur was also told that the law enforcement services used their weapons to arrest certain individuals, even when they were not threatening police security; several people also testified that they had been shot at during arrest.

II. PROTECTION OF DETAINEES AGAINST TORTURE

47. The Republic of Cameroon has two juridical systems, one based on common law and the other on civil law, which apply respectively in the two English-speaking and the eight French-speaking provinces. However, a number of laws have also been issued which apply throughout the country. The Penal Code was the first of these, but the penal procedure codes still need to be harmonized. The English-speaking provinces currently use the Criminal Procedure Ordinance of 1958 and the French-speaking provinces the 1938 Code d'instruction criminelle (Code of Criminal Investigation). Despite certain differences, the two codes of procedure, which have been amended on various occasions, are very similar.

A. Custody

48. Article 9 of the Cameroonian Code of Criminal Investigation provides that judicial custody decided upon at the beginning of a judicial investigation for the purpose of gathering evidence of the offence or after arrest in flagrante delicto may last up to 24 hours. It can be on the order of the Attorney-General, the government procurator, the investigating magistrate, a gendarmerie senior officer or sergeant, a gendarmerie station or squad commanding officer, the Head of the Department of Security or a senior police officer. During the first 24 hours, the suspect's case must be brought before the government procurator, who can extend the custody up to three times. According to information from non-governmental sources, the law requiring that the person in custody must be brought before the government procurator is not complied with in practice. At the conclusion of the custody period, the suspect must be either referred to the prosecution service for formal indictment or released. It should be noted that the institution of habeas corpus, the right to apply to a judicial authority for a ruling on the lawfulness of the detention, exists in the two English-speaking provinces.

49. The NGOs claim that custody limits are never complied with. When he was able to consult the custody register, the Special Rapporteur saw notes to the effect that custody had been extended on the decision of a procurator. However, a large number of people interrogated in the various police and gendarmerie stations visited said that they had been arrested more than three days previously and had not been brought before the prosecution service or the procurator. Again, almost none of the people interviewed knew exactly which authority had ordered custody or what were his rights, particularly to assistance from counsel.

50. While Cameroonian law does not appear to prohibit contact between detainees and the outside world unless the prosecution service has ordered incommunicado detention, there are no legal provisions expressly guaranteeing the right of persons in custody to speak to a lawyer, a legal adviser or members of their family in the hours immediately following arrest. Practice suggests that this is at the discretion of the head of the detention unit. Almost all detainees interviewed at police and gendarmerie stations said that they had been questioned without a lawyer or other third party being present. Consequently, there was no external presence ensuring that the interrogation was carried out in accordance with Cameroonian law. Additionally, certain detainees testified that their families or lawyers had been harassed or threatened when attempting to visit them in custody. A detainee in a police station said, for example, that a lawyer friend had been threatened by the police when she came to the station, and he did not know whether she had been informed of his recent transfer to another station. The Special Rapporteur was informed by

a lawyer whom he met that lawyers did not visit detention units to see their clients, but instead applied directly to the detaining authority for details of the case they were handling. This was confirmed by an advocate-general of the Supreme Court, a member of the National Committee on Human Rights and Freedoms. The Decree of 26 February 1931 on preliminary investigation provides that individuals placed in custody only have the legal right of access to a lawyer when they are brought before the prosecution service. The investigating magistrate is required to inform the accused of his right to appoint counsel from among the members of the Bar. The same source states that the prosecution service takes the initiative of sending for people detained in custody or sends an assistant procurator to the detention unit. He said that, in his experience, when the forces of law and order discover that a case has been brought to the attention of the prosecution service, the individual is released immediately, unless a case can really be brought against him. He said, however, that relatives generally were always allowed access to detainees, if only in order to bring them food.

B. Pre-trial detention

51. Pre-trial detention,⁸ which is thus within the purview of the prosecution service, can last as long as the investigation requires. There is no legal framework setting time limits for such detention. As stated above, the Chancellery of the Ministry of Justice has, however, issued guidelines designed to reduce time in pre-trial detention to a maximum of one year, or six months in the Yaoundé and Douala jurisdictions. Article 53 (1) of the Penal Code provides that, in the case of a custodial sentence, the time spent in pre-trial detention is, however, deducted from the sentence. Chapter VIII of the Code of Criminal Investigation states that bail may be granted at any stage of the proceedings, but it must be at the detainee's request. The bail conditions depend on the suspect's bond, on his character and on the seriousness of the offence. Current legislation also provides the suspect with the opportunity to appeal if his bail request is refused, which can hold up the proceedings. All the authorities met by the Special Rapporteur emphasized that pre-trial detention should be the exception and bail the rule. However, the government procurator at Douala said that pre-trial detention warrants had to be issued in cases of violation of physical integrity, misappropriation of public funds, robberies (except where the damage was very minor) and breach of trust (particularly where the breach was committed from base motives and where the sum of the damage was considerable). He also explained that, if the person provided a bond and there was no risk of subornation of witnesses or destruction of evidence, the criminal investigation officer was not obliged to follow the procurator's custody order. The procurator required merely that the accused be present when referred to the prosecution service, at which point the criminal investigation officer had to decide whether the accused needed to be kept in custody during that period. Lastly, it should be noted that Cameroonian law does not provide for any compensation for damage suffered as a result of arbitrary detention. The only exception is in article 55 (2) of the Code of Criminal Investigation, which provides that where it is proved that a magistrate's fault caused pre-trial detention to be unduly prolonged, the magistrate shall bear the cost of compensating the victim. However, the procedure is so complex that few citizens are likely to have the opportunity and the means to avail themselves of it.

52. According to the information received, Cameroon has no detention centre specifically for untried prisoners, even though articles 603 and 604 of the Code of Criminal Investigation require holding centres for untried prisoners to be separate from prisons for the serving of sentences.

Hence, untried prisoners are either held at the police or gendarmerie stations to which they were taken after arrest or transferred to prison. The latter option is what the law requires, but lack of facilities mean that it is not always exercised. The Bamenda provincial delegate for national security told the Special Rapporteur that the shortage of vehicles and staff meant that many detainees were kept in the detention units under his authority when they should long ago have been transferred to prison. The NGOs cite figures, borne out by information from the governors of New Bell and Kondengui prisons, according to which 80 per cent of the current prison population of Cameroon consists of untried prisoners. Many accounts were received indicating that length of detention frequently exceeds reasonable limits, which makes the pre-trial detention inhuman in itself. Some prisoners have reportedly been in pre-trial detention for over seven years. However, the relevant authorities were not able to provide statistics. The Minister for Territorial Administration, responsible for penitentiaries, admitted that the length of pre-trial detentions was one of the causes of the overcrowding problem.

53 It should also be emphasized that untried prisoners cannot benefit from a reduction of sentence following presidential pardons. Equally, article 637 of the Code of Criminal Investigation provides for the public right of action to lapse after 10 years for criminal offences and 3 years for ordinary offences, if prosecution has begun but no verdict has been reached, the time is measured from the date of the last investigation or action. There appear to be very many cases of this kind. To sum up, the information received indicates that pre-trial detention is used not to attain its primary goal of upholding order and security and facilitating investigations, but rather, in the perception both of the public and of the forces of law and order, as a sanction. Thus, at a workshop organized by the National Committee on Human Rights and Freedoms, the head of a provincial national security service commented that certain officials had turned police and gendarmerie stations into correctional institutions and that custody was often ordered in cases with no criminal element.⁹ The Special Rapporteur noticed when visiting various detention units that many cases in fact involved civil offences. The Delegate-General for National Security emphasized that it was a violation of Cameroonian law.

54 The heads of the various police and gendarmerie stations visited by the Special Rapporteur all said that the system of visits by a procurator guaranteed that persons arrested were not detained arbitrarily or ill-treated. Procurators have the power to order the immediate release of any person detained arbitrarily. The Douala procurator told the Special Rapporteur that he carried out both announced and unannounced checks on the various detention units under his jurisdiction; ideally, and in accordance with internal instructions, he and his assistants should carry out such checks regularly, not less than once a week. In reality, the shortage of manpower (there are only 9 assistants at Douala, as against 22 at Yaoundé) and equipment, especially transport, oblige him to rely on the heads of the detention units to send him regular custody reports. The detention units keep a register of persons in custody which must indicate, inter alia, the date and hour of entry into custody, the suspect's identity, and the reason and term of custody; that register is to be consulted daily by the head of the detention unit on arrival for duty. Likewise, as every suspect is entitled to a medical examination on arrest, a medical record must be completed for new detainees each morning by the head of unit. A copy of those registers should be sent to the government procurator so that he can monitor detainees' situation, the reports also permit him to verify the lawfulness of detentions. The Douala procurator explained, however, that monitoring detention conditions was not part of his mandate and he could not officially initiate action against a law enforcement official who had committed acts of torture, it

was for the victim to lodge a complaint. If it was proved, on the other hand, that confessions had been extracted by means of torture, the case was dropped and the person discharged. The Penal Code provides that confessions obtained by force are not admissible in court. The Special Rapporteur noted that the only cases in which an action had been brought against torturers were those in which the victim had died, leading to public demonstrations.

55 Regarding the recording of suspects' details in custody registers, the NGOs stated that the registers were updated only very rarely. It appears that many arrests and detentions are not recorded. A lawyer told the Special Rapporteur that unlawfully detained persons were released or hidden when the forces of law and order were expecting a visit by a procurator. It should be recalled that the Special Rapporteur was unable to consult full custody registers or records on various of his visits, especially that to the Douala tenth district police station, and thus was unable to check whether they were kept properly up to date and whether the documents for extension of detention had been completed by the prosecution service. On the subject of the frequency of procurators' visits, the senior officers at the Yaoundé criminal investigation service unit said that the last visit had taken place more than five months previously. Most heads of all types of detention unit declared that they had confidence in their subordinates and assured the Special Rapporteur that their staff respected Cameroonian law and its prohibition of torture and other ill-treatment, nevertheless, the Special Rapporteur drew their attention to the lack of institutional structures ensuring constant compliance with the law.

56 The heads of police and gendarmerie stations explained that, since family and friends had to bring water and food to detainees because nothing was provided, they were also able to ensure that detainees were properly treated. However, it should be noted that visitors are not always allowed direct access to detainees and, as emphasized above in paragraphs 5, 12, 20 and 21, fear of reprisals prevents many from making complaints against police officers. Many non-governmental sources have said in addition that the public is still not familiar with its rights and with complaint procedures, victims and their relatives often are not even aware that it is possible to bring complaints against public servants. On the subject of provisions, mention should be made also of the "new man tax" which is apparently common, especially in the English-speaking provinces. Every new arrival in a cell is required to pay a sum of money to the head of cell for the purchase by the guards of essentials such as food or toilet paper for all the occupants of the cell. According to the information received, part of that money is also retained by the guards. Several accounts have reported violence by the head of cell, with the guards' permission, as a means of extracting the tax.

C. Administrative detention

57 Act No. 90/054 of 19 December 1990 on the upholding of order provides that the administrative authorities may order administrative detention of individuals in order to maintain or restore public order and as part of the struggle against large-scale bandit activity. Such detention may be ordered by a governor or prefect for a renewable period of 15 days, the law does not state how many times the detention may be renewed. According to the Minister for Territorial Administration, a prefect's decision may be revoked by a governor and a governor's decision by the Minister himself if they consider the grounds invoked for an administrative detention to be insufficient. The Minister said that the number of administrative detentions had declined considerably in recent years, but could not provide precise figures. He also admitted

that, in the past, when custody had not been covered by the Code of Criminal Procedure, the judicial authorities had themselves used administrative detention as a means of avoiding the formalities involved in judicial proceedings. During the Special Rapporteur's visits to police or gendarmerie detention units, it was often impossible to establish whether there were administrative detainees present, for the authorities were generally unable to produce the relevant registers. The Bamenda provincial delegate for national security said that no cases of administrative detention had come to his attention since his appointment eight months earlier. The director of the criminal investigation service at Yaoundé confirmed that tendency, but said nonetheless that of the 58 people in custody on the day of the visit by the Special Rapporteur's team, 20 were under detention warrants issued by prefects or governors. He denied, however, that they were in administrative detention, saying that it existed only when emergency laws were in force. There appears to be some confusion between administrative detention and detention under Act No. 90/047 of 19 December 1990 on the state of emergency, which authorizes prefects and governors in regions where a state of emergency has been declared to detain any person who may pose a threat to public security for a period respectively of 7 and 15 days. Article 6 of the Act provides that the Minister for Territorial Administration may, on the same grounds, order the detention of any person for a period of two months, renewable once. While the authority ordering the detention may vary, the detainees are all subjected to the same régime and held in the same establishments under the same conditions.

D The judicial system

58 Many sources, including NGOs, have on various occasions cast doubt on the independence of the judiciary.¹⁰ Politics and corruption are said to play a prominent role in the administration of justice. The Special Rapporteur was told of many cases. Yet the Cameroonian Constitution of 18 January 1996 established a judicial authority, with independence guaranteed by the Head of State, which appoints judges on the advice of the Supreme Council of Justice. According to judicial sources cited by one NGO, judges consult the authorities on the approach to adopt in sensitive cases. Hence, it has been noticed that politically sensitive trials are handled with care and generally in a manner favourable to the authorities.¹¹ Corruption, which is recognized by official and non-governmental sources as a major problem in Cameroon, was also identified as a source of injustice. The government procurator at Douala admitted that there were bound to be black sheep in all State organizations, but said that steps had already been taken in the sphere of justice, including the suspension of some judges.

59 A presidential decree of April 1997 established that offences committed in a military establishment or using firearms or weapons of war, particularly those connected with large-scale bandit activity and organized crime, shall be tried by military tribunals. It was explained to the Special Rapporteur that only the military could properly appreciate the nature of the equipment used. However, military judges receive the same training as judges in civil courts, and officials at the Ministry of Justice said that the sentences handed down by military tribunals were no more severe than those from civil courts. Moreover, it was possible to appeal against the sentences in the civil courts. Only the Minister for Defence could initiate the public right of action before a military tribunal. Since the gendarmes were part of the armed forces, they were brought before military tribunals when they committed offences in the performance of their duties, whereas offences committed by police officers were tried by the civil courts.

60. There is no independent authority responsible for conducting inquiries into offences committed by members of the forces of law and order. Each force, be it the gendarmerie or the police, therefore carries out inquiries into allegations concerning its own members. All authorities emphasized, however, that the police officers or gendarmes responsible for investigating allegations against the forces of law and order conducted the inquiries with full impartiality, this was guaranteed by the procurator in whose name the inquiries were carried out. The Ministry of Justice officials claimed that the close collaboration, to the point of complicity, which could ordinarily exist between procurators and the forces of law and order stopped as soon as the law was overstepped. The procurator therefore has to adopt a sort of split intellectual personality in order to supervise the inquiry conducted into his regular associates. The officials claim that supervision of the procurator by his superiors ensures impartial conduct of the inquiry. However, the information received indicates that members of the forces of law and order are seldom investigated or indicted for torture and other ill-treatment. The NGOs also shed doubt on the idea that such investigations could be completed, since each participant would seek to protect his colleagues out of solidarity. All the officials asserted, nevertheless, that all cases of torture in detention were reported to the prosecution service and inquiries conducted. The Special Rapporteur did not receive any statistics on this or precise information about judicial decisions in such cases, even though the authorities claimed that there had been several. The NGOs stated that impunity was still the rule, even if there had been some improvements. As emphasized above, part of the impunity problem seems to stem also from the victims' failure to register complaints because they are unfamiliar with their rights and the procedures, lack confidence in the justice system and fear reprisals. The Special Rapporteur noted from interviews that many victims had indeed failed to complain for those reasons. Some victims had merely described their cases to NGOs, which had not always advised them to make a formal complaint, often limiting themselves to writing to the authorities concerned. Additionally, the NGOs informed the Special Rapporteur of a specific problem connected with the defence of the needy: the officially appointed lawyers were reportedly unwilling to give due attention to the cases assigned to them because they were paid very little. Hence, many people were poorly defended and received heavy sentences for minor offences because of lack of money.

61. The Special Rapporteur also received information on members of the forces of law and order who had been tried for torture. It is reported that, in the case of a prosecution service official who had been ill-treated while inspecting custody arrangements in a Yaoundé police station in 1995, the police officers concerned, tried for offences including unlawful arrest, unlawful imprisonment, failure to provide assistance and actual bodily harm, were sentenced on 1 March 1996 by the Yaoundé Court of Major Jurisdiction to up to 10 years' imprisonment. The Central Court of Appeal (sitting at Yaoundé) subsequently reduced the sentences to a maximum of two years' imprisonment. In the case of Paul Njodomegni, who died as a result of torture inflicted on the night of 6/7 November 1997 at the Yaoundé fifth district police station, two police officers, an inspector and a constable, were charged with committing torture and their superior, a superintendent, with abetting torture. The Yaoundé Court of Major Jurisdiction reduced the charges to, respectively, fatal wounding and failure to provide assistance, and sentenced them on 5 June 1998 to five years' imprisonment and a further one year's imprisonment suspended. The Central Court of Appeal finally upheld the conviction of the two officers, while recognizing "mitigating circumstances", and judged the superintendent not guilty for lack of evidence. The two officers were sentenced to two years' imprisonment and

three suspended and ordered to pay jointly with the Republic of Cameroon 10 million CFA francs in damages. It is further reported that, in the case of Emile Maah Njock, who died as a result of torture including burns from an iron, inflicted in the Yaoundé third district police station, a superintendent and an inspector were sentenced by the Mfoundi Court of Major Jurisdiction to six and 10 years' imprisonment respectively for abetting torture and committing torture. On 9 February 1999, the Central Court of Appeal reduced the superintendent's charge to failure to provide assistance and reduced his sentence to one year's imprisonment and a fine of 250,000 CFA francs, the inspector was found guilty of torture and sentenced to eight years' imprisonment. They were also jointly ordered to pay 10 million CFA francs to the victim's family; the court declared the Office of the Delegate-General for National Security to bear civil responsibility.

62. The slow pace and ineffectiveness of justice, leading to protracted pre-trial detention, were mainly attributed by the authorities to staff shortages and above all lack of funds, and to a lesser extent to magistrates' lack of training. The 1972 edict had attempted to resolve the problem of shortages of judicial staff by giving procurators the power to institute proceedings and investigate. That reform does not appear to have had the anticipated effect, on the contrary, it gives rise to a problematic situation whereby there is no independent judge in charge of the judicial inquiry, which is thus conducted by the prosecutions department handling the criminal proceedings. There is also no visiting magistrate: convicted prisoners come under the prisons administration, an integral part of the Ministry of Territorial Administration. Cases are also very frequently adjourned. For example, the government procurator to the Buea Court of First Instance said at a seminar organized in 1996 by the National Committee on Human Rights and Freedoms that in criminal cases, once an appeal is lodged, it takes so long for a decision to be taken that the appellant serves his sentence several times over while waiting.¹² It was also reported that detention continued long beyond discharge or acquittal, since judicial decisions are not always duly conveyed to the prison management, it appears that detainees are themselves obliged to obtain them. According to the NGOs, some files are even lost and it also happens frequently that people who have spent years in pre-trial detention are released for lack of evidence.

E. The recent criminalization of torture

63. The new article 132 *bis* of the Penal Code¹³ entitled "Torture", which is defined (item 5) in terms similar to those in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984),¹⁴ criminalizes acts of torture, establishing a system of penalties of varying severity (items 1 to 4) depending on the seriousness of the physical or mental injury inflicted by members of the forces of law and order. In compliance with international law, exceptional circumstances such as a state of war, a threat of war or internal political instability, and defence on the grounds of an order from a superior officer, are not admitted by the article. It also makes torture an international offence, allowing the national courts to try any Cameroonian citizen or resident for committing such acts abroad, whether or not they are punishable in the country where they were committed. A foreign citizen who enters Cameroon after committing such acts in another country is liable to extradition following a preliminary inquiry to establish the facts (article 28 *bis* of Act No. 64/LF/13 of 26 June 1964). However, the Cameroonian Extradition Act (1964) provides that no one may be sent back to a country where his life or person may be endangered. This is guaranteed by the extradition

procedure. On the advice of the Court of Appeal, the extradition file is sent to the Ministry of Justice, which verifies that the substance and form fulfil the criteria. The extradition is finally put into effect by presidential decree. The President of the Republic is bound by an unfavourable Court of Appeal judgement. The Ministry of Justice is also studying a project to include all the basic human rights in the right to non-refoulement.

F. The National Committee on Human Rights and Freedoms

64. The Republic of Cameroon has recently established a national institution for the promotion and protection of human rights, the National Committee on Human Rights and Freedoms, created by Decree No. 90/1459 of 8 November 1990 and in operation since February 1992. Its mandate includes receiving denunciations of human rights violations and reporting them to the President of the Republic and to other competent authorities, visiting all types of detention units, proposing human rights measures to the public authorities and organizing training programmes. The last of these functions is regarded as paramount, given the lack of awareness among the public and the forces of law and order. The Committee's relatively broad mandate allows it to take action in a large number of cases, even though its staff is small. A delegation makes frequent visits to places of detention in order to attempt to stop violations of individuals' human rights. The Chairman of the Committee commented, however, that some of the Committee's recommendations had not been implemented by the authorities. The Committee can also provide informal legal assistance. Since the beginning of 1999, the Committee has received only seven allegations of torture, though its members admit that the number of cases must certainly be far higher. To date, the Committee's activities have been mainly of a confidential nature and its recommendations have been made available only to the relevant authorities. However, the Committee has decided to make part of its activities public and has begun by publishing a five-year report of its activities from February 1992 to February 1997, in future, reports should be published annually.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

65. The Special Rapporteur received excellent cooperation from the Government in the way of availability of most of the senior and other responsible officials he sought to meet, up to and including ministerial level. The only exception was the Minister of State for Defence who did not grant the interview sought by the Special Rapporteur. The overall cooperation was also evident in the ready access the Special Rapporteur was given to official institutions, including prisons and gendarmerie and police stations, whether on planned or unannounced visits. Again, the only exception was the denial of access to the special "anti-gang" unit which, according to all the official sources with which he spoke, was under the direct authority of the Minister of State for Defence.

66. As in other countries of the Central African region, there are fissiparous forces at play that make the State difficult to govern. Tribal loyalties compete with loyalty to the nation. The move in 1972 from a federal to a unitary State has left substantial portions of the English-speaking part of the original federation disaffected. Some elements of the political opposition, a major expression of which is the Social Democratic Front (SDF), widely supported

in the areas in which the English-speaking minority predominates, believe that the results of the 1992 presidential and parliamentary elections were not an accurate reflection of their electoral performance and that the same applies to the 1997 parliamentary elections. They boycotted the 1997 presidential election, arguing that the absence of an independent electoral commission undermined confidence in the eventual outcome. The Special Rapporteur expresses no view on the reasonableness of these suspicions; he confines himself to noting them as a political fact affecting the governance of the country.

67. The Special Rapporteur also has no reason to doubt the public insecurity provoked by a substantial crime problem, some of it organized. Certainly, the problem of highway robbery in the northern provinces, complicated as it is by its transfrontier connections with Chad and Nigeria, would be a challenge to any Government. Nevertheless, by the standards of the region, the country enjoys considerable stability. This is clearly a matter for some legitimate satisfaction on the part of the Government, not least because of the relatively respected role in the region to which this stability conduces.

68. Cameroonian law, inspired by the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the State is a party, clearly criminalizes torture. Various other provisions of the law would catch other prohibited ill-treatment. It is, nevertheless, clear from the mission that the law is flagrantly disregarded by police and gendarmerie officials. Indeed, the large number of places in various parts of the country in which he met people who still showed signs of what could only have been recently inflicted physical torture, as well as many others whose testimonies convincingly alleged torture at the time of the first arrest (but not necessarily in subsequent remand detention in prisons or even in other police or gendarmerie establishments) lead the Special Rapporteur to conclude that torture is resorted to by law enforcement officials on a widespread and systematic basis. The denial of access to the "anti-gang" headquarters at Maroua and the initial concealment of the detainees' register at the 10th arrondissement police station in Douala, and the Special Rapporteur's consequent grave concerns at what might have been happening to those who may have been detained in those places, merely serve to confirm what he was able to perceive with his own eyes and other senses.

69. Torture is generally used for the standard purposes of obtaining information relevant to the maintenance of law and public order, obtaining confessions to crimes from persons suspected of having committed them and administering instant, extrajudicial punishment. It also seems that neither youth nor age are factors tending to protect persons deprived of their liberty from being inhumanly treated.

70. There remains the question of the level at which political responsibility arises. The Special Rapporteur has no doubt that torture is condoned if not encouraged at the level of the heads of the places of detention where it takes place. Local police and gendarmerie chiefs, having usually come from the ranks, must be presumed to be aware of and to tolerate the practice. If the top leadership of these forces and those politically responsible above them do not know what the Special Rapporteur's delegation was able to discover in a few days, it can only be because of a lack of will to know. Moreover, when it comes to severe disruptions of public order, be they of a political nature, as in the English-speaking provinces in 1991-1992 and 1996-1997, or major violent criminality, as recently in the northern provinces over which the

special "anti-gang" unit based in Maroua has jurisdiction, it is clear that the security forces, both military and gendarmerie, are led to believe, from a level not lower than ministerial level, that the rule of law, comprising such inhibitions as the prohibition of torture and seemingly even murder, is to be no obstacle to the priority objective of restoring public order. Positive developments, however, include the adoption in 1997 of article 132 *bis* of the Criminal Code criminalizing torture and the recent decision to grant the International Committee of the Red Cross access to places of detention. This may indicate political will to confront the problem.

71. A number of factors can be identified as contributing to this situation, both systematic and legal-institutional. At the systematic level, corruption, within both law enforcement agencies and organs of the administration of justice (procuracy and judiciary), was frequently indicated to the Special Rapporteur by official as well as non-governmental interlocutors as being a key factor. Another was a freeze on recruitment of personnel, leading superiors to prefer to retain rather than dismiss undisciplined subordinates. Indeed, despite one or two high-profile prosecutions of law enforcement officials, where deaths occurring under torture had provoked a public outcry, there appeared to be a climate of impunity. There was also a general perception that judges and prosecutors were and considered themselves as officials of the Ministry of Justice, and thus subject to the authority of the executive power.

72. In general, the situation described above could only persist in a climate in which the law enforcement personnel involved considered that they enjoyed immunity for their actions. The few cases in which there have been prosecutions concerned ill-treatment of an investigating magistrate and two notorious deaths in custody. Even in the latter, flagrant cases, the judiciary seemed reluctant to find law enforcement officers guilty of torture as such and thus impose or maintain sentences appropriate to that crime.

73. A number of legal-institutional problems were apparent. First of all, the prevalence of different bases of arrest and detention (administrative, preliminary investigation, remand ordered by a prosecutor in a police or gendarmerie station, as well as remand in a penitentiary) resulted in many inmates having no idea of the formal authority responsible for their deprivation of liberty. The delay in access to a lawyer - most had none, nor the means for one, and officially-designated lawyers were not trusted, even by those who knew they had a right to one - was another factor. It is the case that, because no food is usually provided, families are encouraged to bring food. But even where families have the means and are located sufficiently close to the place of detention to bring food, they will not necessarily have access to the detained family member, nor will they, for the most part, know how or to what authority to complain if they fear something untoward has happened, even if they are not too afraid for themselves or their detained relative to raise their voices.

74. In any event, it is also clear that the system provides inadequate remedial channels. The Special Rapporteur found a generally shared, but manifestly unjustified, official faith in the ability of the chain of command to guarantee proper behaviour by law enforcement officials. As indicated above, the chain of command, where not directly implicated, generally evinces no serious will to prevent and redress abuses.

75. Prosecutors have also failed to discharge their responsibilities. They are supposed to make regular inspection visits to ensure that those under detention are lawfully detained. Chief

prosecutors admitted lack of resources to do this as often as they would wish, and those inspections that do occur do not necessarily extend to a review of the treatment of those held. Their very willingness to order detention in the exiguous conditions that apply in most places of deprivation of liberty suggests that they must be prone to accept a degree of penury as simply a fact of life attendant on detention. Also, the fact that most of their working lives are spent in collaborating with the law enforcement officials in their jurisdictions no doubt militates against a too confrontational posture towards their regular collaborators.

76. Visits to two penitentiaries and one prisoner's wing of a civilian hospital could not aspire to the thoroughness required for a comprehensive assessment of conditions of detention. Perhaps the most notable and most evident factor was the appalling overcrowding, particularly in the sections where adult male remand and convicted prisoners were kept, unsegregated. Lack of resources was stated to be the reason. The same reason was also given for the paucity of medical facilities. Here it was agreed, however, that the more serious cases would be eligible to be sent to a civilian hospital. In fact, it seemed some hospitals would not treat the prisoners without payment - and the prison authorities did not have the means. In any event, if the conditions of treatment the Special Rapporteur found in Bafoussam hospital are typical, then the therapeutic benefits of such transfers are questionable. Finally, prisoners' allegations concerning the arbitrariness of the warders, (abusive use of disciplinary power and direct resort to physical assault) appeared to be confirmed by one prison governor who admitted ordering a bastonnade on a recaptured escapee, with a view to preventing worse from his warders, and the finding of three naked prisoners accused of murdering a gendarme in a large, bare, dark screening cell, while the other such cell was crammed with the rest of the recent arrivals.

77. As noted above, one positive element in the dismal situation described in the preceding paragraphs is the recent arrangement permitting the International Committee of the Red Cross to visit places of detention in Cameroon on its own conditions. This work only began in February 1999. Its reports and recommendations to the authorities will, in keeping with its normal operating methods, be confidential. Its traditional professionalism should ensure that it is in a position to bring matters such as those described in the present report to the immediate attention of high governmental authorities. Any benefits of its work will have to be assessed over a substantial period of time.

B. Recommendations

78. Accordingly, the Special Rapporteur makes the following recommendations, by way of first basic steps towards the systematic reduction of the practice of torture and other prohibited ill-treatment.

(a) The highest political authorities should proclaim in public statements and internal governmental instructions that torture and other ill-treatment committed by public officials will not be tolerated and that those found to have been involved in committing or tolerating such acts will be instantly removed from the public service and prosecuted with the full vigour of the law.

(b) Exceptions should be made to any policies restricting the recruitment of public officials, so that posts vacated by persons dismissed for such offences may be subject to recruitment.

(c) A separate fully resourced corps of prosecutors, with specialized independent investigative personnel, should be established to pursue serious criminality, such as torture, committed or tolerated by public officials,

(d) A body such as the National Commission on Human Rights should be endowed with the authority and resources to inspect at will, as necessary and without notice, any place of deprivation of liberty, whether officially recognized or suspected, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question, reputable non-governmental organizations, some of which already provide humanitarian assistance in some penitentiaries, could be associated with these functions,

(e) The family and lawyers of persons deprived of liberty should have unmonitored verbal and visual access to such persons within 24 hours or, at most, in exceptional cases, 48 hours,

(f) Medical facilities should be provided for the examination by a doctor independent of the service in question of any person deprived of liberty within 24 hours of such deprivation,

(g) The special "anti-gang" unit based outside Maroua, if not disbanded, should be brought under effective political and administrative control, and the record of its personnel, including its commander, should be minutely scrutinized with a view to pursuing and prosecuting anyone involved in, or tolerating, torture or murder,

(h) The gendarmerie and police should establish special services designed to investigate complaints of, and to weed out, serious wrongdoing, such as torture,

(i) Major resources need to be deployed to render the plant and facilities of all places of deprivation of liberty suitable to ensure minimum respect for the humanity and dignity of all whom the State deprives of liberty,

(j) All non-violent first-time offenders or suspected offenders, especially those under 18, should be released, nor should any such suspected offenders be deprived of liberty until the prison overpopulation problem has been resolved,

(k) The system of using prisoners in an auxiliary disciplinary capacity should be discontinued,

(l) The Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the independence of judges and lawyers should be invited to visit the country. A particular focus of such a visit might be prosecutorial and judicial reluctance or inability properly to monitor the treatment of persons deprived of their liberty, especially by the police and gendarmerie, and to prosecute and convict law enforcement officials responsible for torture and to impose the corresponding sentences

Notes

¹ "The Committee deplores the multiple cases of torture, ill-treatment, extrajudicial execution and illegal detention, suffered in particular by journalists and political opponents. Torture and ill-treatment seem to be practised systematically by the security forces, and on several occasions their brutality has caused the death of the victims" (CCPR/C/79/Add.33, para. 11).

² National Committee on Human Rights and Freedoms, "Rapport de l'atelier sur l'amélioration des conditions d'arrestation et de garde-à-vue", December 1998, p. 9.

³ See Amnesty International, "Cameroon. Extrajudicial Executions in North and Far-North Provinces", December 1998.

⁴ "[The Committee] also deplores the fact that such brutality [torture] is practised in prisons, as well as non-respect for the provisions of article 10 of the Covenant in detention centres where men and women, convicted and unconvicted prisoners, adult and juvenile offenders are held in the same, generally insalubrious, cells" (CCPR/C/79/Add.33, para. 12).

⁵ Amnesty International, "Cameroon. Blatant Disregard for Human Rights", 16 September 1997, p. 33.

⁶ International Federation of Human Rights (FIDH), "Cameroun arbitraire, impunité et répression", May 1998, p. 32.

⁷ See especially International Prison Watch, "Etude sur la situation des prisons au Cameroun", by Philippe C. Akoa, commissioned by the United Nations Development Programme.

⁸ On pre-trial detention, see Antoinette Ekam, "Considérations sur la détention préventive", *Cahier africain des droits de l'homme*, No. 1, November 1998, Association pour la Promotion des Droits de l'Homme en Afrique Centrale, pp. 89-111.

⁹ National Committee on Human Rights and Freedoms, "Rapport de l'atelier sur l'amélioration des conditions d'arrestation et de garde-à-vue", December 1998, p. 12.

¹⁰ United States Department of State, "Country Reports on Human Rights Practices for 1998", vol. I, April 1999, p. 46.

¹¹ International Federation of Human Rights (FIDH), "Cameroun arbitraire, impunité et répression", May 1998, p. 6.

¹² National Committee on Human Rights and Freedoms, "Rapport du séminaire de formation des juristes sur les droits de l'homme", January 1996, p. 22.

¹³ Act No. 97-9 of 10 January 1997 (see annex I).

¹⁴ It is interesting that Act No. 97-7 of the same date authorized the President of the Republic to ratify the Convention against Torture. For a more detailed study of article 132 bis of the Cameroonian Penal Code, see Edouard Kittio, "Observations sur le nouvel article 132 bis du Code pénal relatif à la torture" and Félix Onana Etoundi, "La responsabilité des membres de la police judiciaire depuis le nouvel article 132 bis du Code pénal sur la torture" in Cahier africain des droits de l'homme, op. cit., pp. 35-52 and 133-146.

Annexe I

Article 132 bis du Code pénal

Torture

"1. Est puni de l'emprisonnement à vie, celui qui, par la torture, cause involontairement la mort d'autrui.

2. La peine est un emprisonnement de dix (10) à vingt (20) ans lorsque la torture cause à la victime la privation permanente de l'usage de tout ou partie d'un membre, d'un organe ou d'un sens.

3. La peine est un emprisonnement de cinq (5) à dix (10) ans et une amende de 100 000 à 1 000 000 de francs lorsque la torture cause à la victime une maladie ou une incapacité de travail supérieure à trente (30) jours.

4. La peine est un emprisonnement de deux (2) à cinq (5) ans et une amende de 50 000 à 200 000 francs lorsque la torture cause à la victime soit une maladie ou une incapacité de travail égale ou inférieure à trente (30) jours, soit des douleurs ou des souffrances mentales ou morales.

5. Pour l'application du présent article :

a) Le terme 'torture' désigne tout acte par lequel une douleur ou des souffrances aiguës, physiques, mentales ou morales, sont intentionnellement infligées à une personne, par un fonctionnaire ou toute autre personne, agissant à titre officiel ou à son instigation ou avec son consentement exprès ou tacite aux fins notamment d'obtenir d'elle ou d'une tierce personne des renseignements ou des aveux, de la punir d'un acte qu'elle ou une tierce personne a commis, ou est soupçonnée d'avoir commis, de l'intimider ou de faire pression sur elle ou d'intimider ou de faire pression sur une tierce personne, ou pour tout autre motif fondé sur une forme de discrimination, quelle qu'elle soit.

b) Le terme 'torture' ainsi défini ne s'applique pas à la douleur ou aux souffrances résultant de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles.

c) Aucune circonstance exceptionnelle, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'instabilité politique intérieure ou de tout autre état d'exception ne peut être invoquée pour justifier la torture.

d) L'ordre d'un supérieur ou d'une 'autorité' publique ne peut être invoqué pour justifier la torture.

e) Les conditions prévues à l'alinéa 1 de l'article 10 du présent Code ne sont pas applicables à la torture."

Annexe II

Résumé des allégations */

1. Charles Tchuigoua, membre de l'Union nationale pour la démocratie et le progrès (UNDP), aurait reçu deux balles dans le pied gauche, tirées par des militaires depuis une voiture banalisée dans le quartier de Madagascar à Douala, lors des "opérations villes mortes", le 27 juin 1991. Il aurait eu le tibia broyé et aurait dû recevoir des soins médicaux pendant plus de trois ans. Il se serait adressé à toutes les autorités compétentes pour recevoir des moyens financiers destinés à ses soins médicaux, mais n'aurait jamais rien reçu. Au moment de l'interview (16 mai 1999), il continuait à souffrir et il était toujours question de l'amputer.
2. Des membres du Social Democratic Front (SDF) auraient été attaqués par un groupe de gendarmes et de policiers armés alors qu'ils revenaient d'une réunion politique à Bamenda, le 2 octobre 1991. Ces gendarmes et policiers, ainsi que d'autres militaires dans des hélicoptères, auraient tiré sur la foule et auraient lancé des gaz lacrymogènes et des grenades. Un certain nombre de personnes auraient été grièvement blessées et auraient dû être amputées : Joseph Awah Ade aurait été amputé de la main droite, Gerald Fobin, d'une jambe, Hilary Babila, de la main droite, Charles Neba Achuchu et Simon Kiskey, des deux mains. Ils n'auraient jamais reçu aucune aide de l'Etat.
3. Soixante-deux personnes originaires de Balikumbat (dont la plupart des noms sont connus du Rapporteur spécial) auraient été arrêtées le 2 mars 1992 suite aux incidents (destructions, incendies, divers autres actes de violence, etc.) ayant suivi la proclamation des résultats des élections législatives. Elles auraient été accusées d'avoir participé à ces incidents. Elles auraient été frappées lors de leur arrestation; certaines, dont Lebga Voma Philip et Sama Lucas Bah Sunday, auraient été roulées dans de la cendre brûlante; d'autres, dont Yebah Nomuh Paul, Mayo Dongo et Dohsamta Nicholas Bagwoh, auraient été brûlées à l'aide de pneus. La plupart de ces personnes auraient été détenues jusqu'au 6 janvier 1993 à la gendarmerie dite *up-station*, où elles auraient été soumises à divers mauvais traitements. Toutes auraient commencé par être déshabillées et laissées à moitié nues dans leur cellule. Elles auraient été privées de nourriture durant les premiers jours de leur détention et auraient été battues à plusieurs reprises, à raison d'une fois par mois au minimum. Certaines auraient reçu des coups de machette, en particulier Simon Kometa Shighonwi et Gwandi Richard Ninkah. Ulsai Etien aurait perdu la vue d'un oeil suite aux mauvais traitements qu'il aurait subis. Mallam Dewa aurait eu la main cassée suite aux coups de matraque qu'il aurait reçus. La plupart auraient été frappées sur la plante des pieds avec des cannes ou des matraques en bois ou en plastique. Certaines autres auraient été enfermées dans une cellule remplie d'eau pendant la nuit. Selon leurs témoignages, les séances d'interrogation auxquelles elles auraient été soumises auraient entre autres eu pour but de les obliger à impliquer les dirigeants du SDF dans l'organisation de ces incidents. Leurs conditions de

*/ Pour en simplifier la lecture, ces allégations sont présentées par ordre chronologique.

détention se seraient améliorées suite à la visite du Comité national des droits de l'homme et des libertés. Aucun n'aurait eu connaissance des charges pesant contre lui. Nombreux sont ceux qui ont obtenu un certificat médical (dont le Rapporteur spécial possède des copies) qui semble corroborer leurs dires.

4. Lors des mêmes élections législatives de 1992, **Doba Henry Kohtem**, un candidat de l'UNDP, aurait reçu, le 1er mars 1992, quatre balles tirées par le Fon de Balikumbat en présence d'un officier de police qui l'aurait immédiatement conduit aux urgences de l'hôpital de Ndop. Le même jour, il aurait été transféré à l'hôpital de Shisong, où il aurait subi deux opérations (les 2 et 12 mars 1992) pour retirer les divers éclats de balles. Un certificat médical (dont le Rapporteur spécial possède une copie) confirme la présence de 23 éclats de balles. Il serait resté deux mois à l'hôpital. Il aurait encore des éclats de balles dans la jambe gauche, mais n'aurait pas l'argent nécessaire pour recevoir de nouveaux soins. Le Fon aurait reconnu dans une déclaration écrite (dont le Rapporteur spécial possède une copie) qu'il avait ordonné à l'un de ses serviteurs de tirer "accidentellement" sur Doba Henry Kohtem. Le policier présent lors des coups de feu aurait débuté une enquête criminelle contre le Fon. Selon les informations reçues, il aurait été prématurément mis à la retraite moins de deux ans après cet événement. Cette affaire aurait finalement dû être entendue en avril 1994 par la Cour suprême, mais le Fon, en raison de son immunité parlementaire, aurait refusé de se présenter devant la Cour.

5. La communauté Ndu de Wimbun aurait été conviée à un rassemblement du SDF, le 6 juin 1992. Un contingent de gendarmes accompagné par le préfet qui, à la dernière minute, aurait refusé que le rassemblement ait lieu, serait arrivé au marché de Ndu vers midi. De nombreuses personnes auraient alors été arrêtées au hasard, ce qui aurait provoqué une violente réaction de la part de la population, à laquelle les gendarmes auraient répondu en tirant et en lançant du gaz lacrymogène. S'en seraient suivies des émeutes pendant lesquelles de nombreuses personnes, dont **Glory Ngeh**, **Hilary Njeta**, **Anthony Tangiri** et **Shey Yongla**, auraient trouvé la mort. Le 8 juin 1992, des renforts de gendarmes seraient arrivés de Nkambe, Bamenda et Bafoussam, qui auraient arrêté et frappé un certain nombre de personnes, dont en particulier les personnes suivantes (le Rapporteur spécial possède une liste plus complète de toutes les supposées victimes) : **Mary Bienna** aurait été frappée et du piment aurait été introduit dans son vagin; elle aurait été libérée le 2 octobre 1992; **Mama Abiba Muyang**, âgée de 94 ans, aurait été frappée au quartier de Njipluh le 9 juin par les gendarmes et serait morte des suites de ses blessures cinq mois plus tard; **Joseph Lok Fubam** aurait été arrêté le 6 juin et emmené à la gendarmerie de Ndu où il aurait été violemment frappé avec des matraques en plastique et la crosse d'armes; il serait resté deux semaines à l'hôpital; **Tumi David** aurait été forcée par les gendarmes, le matin du 9 juin, à faire entrer une bouteille dans son vagin et aurait ainsi dû ramper sur plusieurs mètres, elle aurait reçu des traitements médicaux au Nigéria, mais elle aurait continué à perdre du sang pendant les deux années qui suivirent; **Julius Kongnyuy**, un enfant de 12 ans, aurait été frappé le 9 juin par des gendarmes avec la crosse de leurs fusils et des matraques; **Samuel Tanyi Ojonng** aurait été obligé de ramper à terre pendant que les gendarmes l'auraient frappé avec leur ceinturon. Le 9 juin, certains hommes et femmes (dont un certain nombre de noms sont connus du Rapporteur

spécial) auraient été obligés à parader nus, après que leurs habits aient été brûlés, dans les rues du village et auraient été conduits au *Ndu Comprehensive High School* où ils auraient été humiliés sexuellement. Ces actes auraient pris fin avec l'arrivée du Secrétaire d'Etat aux travaux publics et aux transports et du Président du Comité national pour les droits de l'homme, le 10 juin 1992.

6. **Neba Nico Kubri**, le porte-parole du SDF, aurait été arrêté le 27 octobre 1992. Il aurait été frappé sur la plante des pieds et sur le reste du corps par les gendarmes à Bamenda. Suite à ces mauvais traitements, il aurait eu la jambe droite cassée. Une note de son docteur (dont le Rapporteur spécial possède une copie) confirme qu'il a été plâtré le 21 décembre 1992.

7. **Cent soixante-douze personnes**, en grande majorité des membres du SDF, auraient été arrêtées suite aux incidents qui auraient suivi la proclamation, le 23 octobre 1992, des résultats des élections présidentielles du 11 octobre. Suivent les allégations détaillées d'un certain nombre d'entre eux :

Nyo Wakai, un des membres fondateurs du SDF et ancien juge à la Cour suprême, aurait été arrêté par des éléments des forces de police, de gendarmerie et de l'armée, le 28 octobre 1992. Au moment de son arrestation, lui et sa femme auraient été frappés avec des matraques en plastique. Il aurait ensuite été emmené à la gendarmerie de Bamenda dans une voiture, apparemment pour cacher son arrestation à la population, dans laquelle il aurait continué à être battu et aurait fini par perdre connaissance. Il aurait ensuite été caché dans le coffre d'une voiture et conduit à la brigade mixte mobile. Un docteur militaire ne serait venu que trois semaines après son arrestation pour l'examiner alors qu'outre de sérieuses contusions, il aurait eu un bras cassé. Le deuxième jour, dans le but de l'humilier, il aurait été déshabillé et photographié en sous-vêtements avec son nom écrit sur une pancarte qu'il devait tenir devant lui. Malgré une décision judiciaire datée du 23 décembre 1992 qui le mettait en liberté conditionnelle, il aurait été transféré le 27 décembre 1992 à la prison centrale Kondengui à Yaoundé, sans qu'aucune explication ne lui soit fournie. Les 29 et 30 décembre 1992, il aurait été interrogé dans les locaux de la Cour suprême, qui servaient de lieux pour l'enquête menée par la Cour de sûreté de l'Etat. Il aurait été inculpé du meurtre d'un candidat indépendant en octobre 1992 et de correspondance avec des puissances étrangères. Aucune suite judiciaire n'aurait pourtant eu lieu depuis. Il n'aurait néanmoins aucune raison de penser que les charges pesant contre lui ont été levées. Il aurait été libéré le 1er janvier 1993. Il se serait plaint au Gouverneur de la province du Nord-Ouest qui lui aurait répondu que certaines personnes allaient être dédommagées. **Nyo Wakai** n'aurait néanmoins jamais rien reçu. **Neba Nico Kubri** aurait été frappé sur la plante des pieds et sur les oreilles; des gendarmes lui auraient sauté sur le ventre et sur les jambes. Il aurait eu la jambe droite fracturée. Il aurait été transféré à Kondengui et libéré en même temps que **Nyo Wakai**. **Theresia Galiga** aurait été arrêtée le 11 octobre 1992 en lieu et place de son mari. Elle aurait fait partie des six femmes arrêtées et battues avec des bâtons à la gendarmerie de Bamenda. Le 27 décembre, elle aurait été transférée avec deux autres femmes à Kondengui, où elle aurait continué à être frappée.

8. **Le docteur Nfor Nfor**, Président de la commission constitutionnelle du SDF, aurait été arrêté le 26 octobre 1992 dans la rue en compagnie d'autres personnes. Il aurait été battu à plusieurs reprises à la gendarmerie de Bamenda, où il aurait fini par perdre connaissance. Pour lui faire reprendre connaissance, il y aurait été brûlé avec une cigarette sur la plante des pieds. Il aurait été détenu à la gendarmerie dans une petite cellule avec 25 autres personnes. Selon son témoignage, ils y auraient dormi à tour de rôle, les uns assis, tandis que les autres étaient debout sur une jambe. Dans cette même cellule se seraient trouvées les toilettes que les détenus devaient nettoyer à mains nues régulièrement. Chaque matin, quelques personnes auraient été choisies au hasard pour être frappées avec des matraques. Il aurait été détenu au secret pendant 11 jours et relâché sans avoir été inculpé.

9. **Aloh Ivo Fointama**, un membre actif du SDF à Belo, se serait fait tirer dessus, sans sommation, par des gendarmes qui se tenaient dans un camion le 2 novembre 1992 alors qu'il se rendait à Bamenda. Il aurait eu la main droite amputée à l'hôpital baptiste de Mbingo, où il serait resté hospitalisé pendant 2 mois et 17 jours. **Augustine Timngum Tuboh** aurait reçu des balles dans la main gauche, le ventre et les côtes lors du même incident, et aurait aussi été soignée pendant deux mois et trois semaines à l'hôpital de Bingu. **Emanuel Nsom** aurait reçu une balle dans une fesse et aurait été soigné pendant 2 mois et 17 jours dans le même hôpital. **Njini Simon Chuosinja** aurait reçu une balle dans les côtes et aurait été soigné pendant 41 jours dans le même hôpital. Sept autres personnes seraient mortes lors de cet incident qui faisait suite à la proclamation des résultats de l'élection présidentielle.

10. **Francis Tata**, un sympathisant du SDF, aurait été placé en résidence surveillée à Bamenda le 26 octobre 1992 et arrêté par les gendarmes le 2 novembre 1992. Il aurait alors été violemment frappé tout en étant interrogé sur son grade dans la soi-disant "armée du SDF" et aurait finalement perdu connaissance pendant quatre heures. Quelques jours plus tard, il aurait été emmené à la gendarmerie dite up-station où il aurait été à nouveau torturé et humilié, en particulier en étant forcé de ramper à terre. Après cinq jours, il aurait été transféré à la brigade mixte mobile (BMM) où il serait resté enfermé dans une cellule sans lumière naturelle pendant cinq jours. Il y aurait été soumis à la technique dite de la balançoire de manière à lui faire avouer qu'il possédait des informations concernant des armes importées par le SDF. Il aurait été emprisonné à Kondengui le 26 décembre 1992 et aurait été relâché le 31 décembre 1992.

11. **Alhaji Ardo Duni**, âgé de 80 ans, et ses deux fils, **Adamu Dohma Duni** et **Mallam Dewa Duni**, des membres du *Mbororo Social and Cultural Development Association* (MBOSCUDA) auraient été condamnés le 11 avril 1993 par la cour de tradition musulmane d'Alkali à Ndawara Kom, département de Boyo, pour avoir organisé des réunions non autorisées du MBOSCUDA chez eux. **Adamu Dohma Duni** aurait aussi été condamné pour avoir créé une école islamique anglo-arabe et aurait reçu 50 coups de canne. Un certificat médical émis par l'hôpital de Ndop (dont le Rapporteur spécial possède une copie) daté du 15 avril 1993 confirme la présence de nombreux hématomes sur le corps d'**Adamu Dohma Duni**. Tous les trois auraient été enfermés dans une petite cellule sans lumière, ni ventilation, pendant trois jours sans eau, ni nourriture, pour avoir refusé

de payer l'amende décidée par la cour. Selon les informations reçues, cette cour serait sous le contrôle d'**Alhaji Baba Ahmadou Danpullo**, un homme d'affaires qui contrôlerait la région de Ndawara et qui serait membre du Comité central du Rassemblement démocratique du peuple camerounais (RPDC). Ainsi, les documents émis par cette cour porteraient le sceau commercial utilisé par **Alhaji Baba**. De plus, la cellule en fer où auraient été enfermées les trois personnes mentionnées ci-dessus se trouverait dans la propriété personnelle d'**Alhaji Baba**. Plusieurs lettres auraient été envoyées aux autorités, dont le Gouverneur et le Procureur de la République de la Province du Nord-Ouest. Une enquête judiciaire aurait été ouverte par ce dernier et par le Secrétaire d'État à la sûreté nationale. Néanmoins, la demande de révision de leur procès en appel déposée le 17 avril 1993 à Bamenda (dont le Rapporteur spécial possède une copie) serait restée sans réponse.

12. **Jean-Philippe Npouma** aurait été arrêté lors d'une rafle à Douala le 4 janvier 1994 par des éléments de la brigade antigang et du génie militaire. Il aurait été placé en détention au génie militaire où il aurait été maltraité durant sa détention. Il aurait eu les pieds attachés à une corde pour empêcher le sang de circuler et des militaires lui auraient écrasé les pieds. Il aurait été laissé sans nourriture pendant neuf jours consécutifs. Il aurait signé le procès-verbal de l'interrogatoire après le troisième jour. Le 17 mai 1994, il aurait été finalement transféré à New Bell à Douala et aurait été condamné à mort le 10 octobre 1995.

13. **Stanislas Maikenge** aurait été arrêté le 19 avril 1994 chez lui par huit soldats. Sa fille et lui-même auraient été frappés au moment de son arrestation. Il aurait ensuite été emmené à la gendarmerie de Kumbo, où il serait resté pendant un mois et cinq jours. Il aurait ensuite été emmené à Bamenda, où, allongé sur le sol, des officiers lui auraient sauté sur le ventre et les mains. À sa libération, il aurait été hospitalisé pendant trois semaines au Bansa Baptist Hospital de Kumbo.

14. **Robert Ayuk** aurait été arrêté à la place d'un de ses collaborateurs dans son atelier à Nkwen le 25 avril 1994 par un policier apparemment sur ordre du commandant en second du groupement mobile d'intervention de Bamenda. Amené dans le bureau du commandant en second, Robert Ayuk aurait voulu expliquer la méprise, ce à quoi le commandant en second aurait répondu : "You anglophones like to show too much sense, I will teach you a lesson" et l'aurait immédiatement enfermé dans une cellule. Trois heures plus tard, le même commandant l'aurait convoqué et lui aurait ordonné de ramener son collaborateur, ce qu'il aurait refusé de faire. Il aurait alors été frappé et aurait reçu des coups de pieds. Il se serait mis à saigner de la bouche, ce qui aurait provoqué sa libération. Ses deux lettres de plainte datées du 25 avril et du 2 juin 1994 adressées au Procureur général de Bamenda (dont le Rapporteur spécial possède des copies) seraient restées sans réponse à ce jour.

15. **John Kernyuy** aurait été arrêté à minuit le 29 avril 1994 par sept gendarmes qui l'auraient menotté et emmené à la brigade de Mbiame. Il y aurait été frappé à plusieurs reprises avec la crosse d'armes, en particulier sur les jambes et les bras. Il aurait aussi été frappé à la tête et continuerait à souffrir de surdité suite à ces mauvais traitements. Il aurait été détenu

pendant deux mois et trois semaines. Nu, il aurait été obligé de dormir à même le sol, après que ce dernier eut été arrosé. Il aurait été finalement relâché après avoir payé la somme de 5 000 francs CFA.

16. **Dorothy Schwarzbach** aurait été arrêtée à Bali en juin 1994 par des gendarmes. Elle aurait été emmenée sans qu'aucune explication ne lui soit donnée dans un champ où elle aurait été frappée à coups de matraque en plastique. Elle serait restée une semaine à l'hôpital. Elle se serait plainte auprès du Fon qui aurait transmis sa plainte au Gouverneur. Elle n'aurait jamais reçu de réponse. Elle aurait à nouveau été arrêtée en mars 1997 par le commandant de la gendarmerie de Bali, qui serait venu lui demander 10 000 francs CFA. Elle aurait été enfermée dans une cellule pendant trois jours sans eau ni nourriture. Avant d'être finalement emmenée chez un procureur à Bamenda qui l'aurait mise en liberté conditionnelle, elle aurait été frappée. Le procureur ne lui aurait pas laissé se plaindre des mauvais traitements qu'elle aurait subis.

17. **Sarli Sardou Nana**, alors secrétaire particulier de John Fru Ndi, le leader du SDF et membre actif de diverses organisations non gouvernementales de défense des droits de l'homme, aurait été arrêté par deux policiers en civil le 23 octobre 1995 à Bamenda. Arrêté sans mandat d'arrêt, il aurait été emmené au poste de la police judiciaire de Bamenda où il aurait été interrogé pendant cinq heures à propos d'un tract politique. Il aurait ensuite été jeté en cellule où le chef de cellule et un autre codétenu l'auraient frappé violemment dans le but de lui faire payer la "new man tax". Selon les informations reçues, les gardiens auraient encouragé les détenus à agir ainsi. De plus, chaque nuit, aux environs de deux heures du matin, les gardiens auraient lancé du gaz lacrymogène dans la cellule. Ils auraient aussi empêché la famille, les amis et l'avocat de **Sarli Sardou Nana** de lui rendre visite. Ce dernier aurait été finalement inculpé de diffamation, mais relâché grâce à la pression des organisations non gouvernementales. En juillet 1997, son affaire aurait été classée sans suite.

18. **Daniel Bounkwo** aurait été arrêté en 1996 suite à une bagarre ayant entraîné la mort. Il aurait été interrogé à la police judiciaire de Douala, où pendant les nuits, et en l'absence des commissaires, il aurait été soumis à la technique dite de la balançoire. Il aurait finalement signé le huitième jour une déclaration qu'il n'aurait même pas lue. Il aurait été condamné à la peine de mort et est actuellement incarcéré à la prison de New Bell.

19. **Ngimu Mabo Augustine, Tomas Nubong, Tayong Wanki, Azie Martin, Menjong Peter Awantang et sa soeur, Maurice Ashangwa, Jacob Abongshwing, Joseph Atanga, sa femme et sa belle-mère, Tanjong Christopher, Afungong Gregory, Nchotindoh Clément, Mabuh Taloh, Mengie Ngwish Achu**, ainsi que de nombreux autres membres de la communauté de Bambili, auraient été maltraités par les gendarmes de Bamenda lors de leur arrestation, le 1er mars 1996, et pendant leur détention jusqu'au 19 mars. Ces gendarmes auraient été appelés afin de résoudre un différend entre les communautés de Bambili et Babanki Tungo à propos de terrains. Le lieutenant qui serait arrivé à Bambili accompagné d'autres gendarmes aurait ordonné aux villageois de se coucher par terre, après s'être déshabillés, et les aurait couverts de boue et de cendres. Ces derniers auraient aussi été frappés sur la plante des pieds, avant de recevoir l'ordre de se rendre à pied et nus à la gendarmerie de Tubah tout

en chantant des chansons obscènes ou de deuil. Arrivés à la brigade, ils auraient été forcés de danser ensemble. Ensuite, les femmes auraient été renvoyées chez elles et les hommes auraient été emmenés à la brigade de gendarmerie de Bamenda. Le lendemain, ils auraient été interrogés en anglais jusqu'au moment où le lieutenant dirigeant l'opération aurait décidé qu'ils mentaient et aurait ordonné que les interrogatoires se poursuivent en français, langue que la plupart ne parlaient pas. Tous auraient été frappés sur la plante des pieds à plusieurs reprises. Chaque jour, ils auraient été obligés de verser 25 francs CFA à un détenu qui aurait reversé cet argent aux gardiens. Dans le cas où l'argent n'était pas versé, l'accès aux toilettes leur aurait été refusé. Aucun n'aurait reçu de traitement médical durant la détention. **Mengie Ngwiah Achu** aurait eu le bras cassé et aurait été ensuite hospitalisée à l'hôpital catholique de Njinikom. **Ngimu Mabo Augustine** aurait été traité à l'hôpital de Bamenda pour ses blessures. Selon le certificat médical daté du 27 mars 1996 (dont le Rapporteur spécial possède une copie), il aurait eu de multiples hématomes dus à des coups de bâtons sur tout le corps, en particulier sur la plante des pieds dont la peau se serait mise à peler. Le médecin l'ayant traité aurait recommandé 108 jours d'incapacité temporaire. Certaines des personnes arrêtées auraient été accusées de meurtre et de coups ayant entraîné la mort, mais aucune ne serait encore passée en jugement.

20. **Walter Lawrence Chimasa** aurait été arrêté le 12 mars 1996 à Bamenda, dans la rue. Il aurait été détenu le premier jour par la brigade de gendarmerie de Bamenda, les sept jours suivants par la légion de gendarmerie, et les 52 jours suivants par la brigade mixte mobile de Bamenda. Il aurait été frappé sur la plante des pieds à plusieurs reprises. On l'aurait privé de nourriture et empêché de se laver plusieurs jours de suite. Deux gendarmes (dont les noms sont connus du Rapporteur spécial) qui auraient accepté de lui acheter du pain les jours où il était privé de nourriture auraient été arrêtés et détenus avec lui pendant quelques jours. Il aurait été relâché 60 jours après son arrestation. Il aurait été inculpé selon les articles 231 et 232 du Code pénal. Lors de son procès, les charges n'auraient pas été retenues contre lui, mais il n'aurait pas été pour autant acquitté.

21. **Yimbu George** aurait été arrêté en juin 1996 alors qu'il participait à une réunion du SDF au Centre des jeunes presbytériens à Kumbo. Il aurait été emmené à la gendarmerie de Kumbo, où, en présence du commandant de la légion et du Sous-Préfet, il aurait été frappé et aurait reçu des coups de pieds sur les côtes, ce qui l'aurait fait cracher du sang. Il aurait été transporté le même jour à l'hôpital. Aucune explication ne lui aurait été donnée quant aux raisons à l'origine de son arrestation. Le 28 mars 1997, trois gendarmes et treize soldats seraient venus avec l'intention de brûler sa maison. Le chef des gendarmes, un de ses amis, aurait néanmoins empêché ses hommes d'exécuter ce plan. Sa maison aurait néanmoins été fouillée. Il aurait été arrêté le même jour sur ordre du Sous-Préfet. La nuit suivante, soit le 29 mars vers deux heures du matin, il aurait été sorti de sa cellule et frappé sur les côtes en présence d'un capitaine de gendarmerie et du Sous-Préfet. Il aurait ensuite été emmené dans une jeep à la gendarmerie à Bamenda. Pendant tout le trajet, il aurait été frappé avec une crosse de fusil.

Les gendarmes l'auraient informé qu'ils avaient reçu l'ordre de le traiter ainsi. Il aurait été détenu pendant 47 jours à Bamenda, et aurait été privé d'eau et de nourriture, pendant les quatre premiers jours de sa détention. Il n'aurait jamais été inculpé.

22. Bakary Madi aurait été séquestré durant 7 mois depuis le mois de juillet 1996 par le lamido de Mindif, qui aurait voulu le priver de ses biens. Ce dernier aurait ordonné à ses notables de l'enchaîner dans une case à l'intérieur de sa concession. Les chaînes auraient été soudées. Il aurait par ailleurs reçu 70 coups de bâtons par jour. D'après les informations reçues, le commandant de brigade et le Sous Préfet auraient été au courant de ce qui se passait, car Bakary Madi aurait été emmené au village pour que ses chaînes soient soudées. De plus, après son évasion, le commandant de légion de Maroua serait venu constater les faits sur demande du procureur. Le lamido aurait alors justifié la détention de Bakary Madi en argumentant que ce dernier était fou et que la tradition lui donnait le pouvoir de détenir les personnes qui pourraient mettre en danger d'autres membres de la communauté. Tous, y compris le lamido et ses notables, se seraient ensuite rendus chez le procureur. Ce dernier n'aurait pourtant pas instruit d'affaires. En 1998, sous pression des organisations non gouvernementales, le lamido aurait été appelé à se présenter devant la cour. Il ne se serait jamais présenté et l'affaire serait ainsi toujours reportée. La prochaine audience devrait avoir lieu le 21 juin 1999. Le procureur aurait subi des pressions de sa hiérarchie et n'aurait par conséquent jamais ordonné la comparution forcée du lamido. Bakary Madi aurait été battu quatre fois par les notables du village pour avoir institué une affaire contre le lamido, qui aurait organisé un comité de vigilance autour de sa maison.

23. Roger Kengne et Theresia Mbukiloh auraient été parmi les nombreux membres du SDF arrêtés et frappés par des éléments de la gendarmerie lors d'un rassemblement politique en octobre 1996 à Bafoussam. Ce rassemblement, qui avait été, selon les informations reçues, autorisé par les autorités, faisait suite au refus de certains bureaux de vote d'inscrire les membres du SDF sur les listes électorales. La plupart des personnes auraient été frappées avec les crosses d'armes, et une quarantaine auraient ensuite été emmenées à la gendarmerie, où elles, et notamment les deux personnes nommées ci-dessus, auraient été frappées sur la plante des pieds. Roger Kengne aurait été frappé avec un ceinturon sur le bas du dos; quant à Theresia Mbukiloh, elle aurait eu le pied cassé et aurait dû rester alitée pendant trois mois. Une femme serait morte des suites des coups qu'elle avait reçus.

24. Raymond Mbeh se serait constitué prisonnier à la brigade de Bassa du deuxième arrondissement de Douala, le 6 janvier 1997. Il aurait été accusé de meurtre. Il aurait été torturé pendant trois semaines, en étant suspendu par les bras et battu. Il aurait finalement été obligé de signer une déclaration reconnaissant les faits. Il aurait été condamné à la peine de mort et est actuellement à la prison de New Bell.

25. Ndula Kometa Simon aurait été arrêté le 19 mars 1997 sur plainte d'un chef traditionnel pour avoir distribué des documents publiés par le *Human Rights Defence Group* dont il fait partie et détenu pendant 87 jours à la gendarmerie de Ndop, à moitié nu et menotté. Il aurait été frappé à plusieurs

reprises au cours de sa détention. En raison de ces conditions de détention, sa santé se serait fortement détériorée. Le 5 juin 1997, il aurait déposé plainte contre les gendarmes pour détention arbitraire.

26. Atambun Geh Sama, un membre du Southern Cameroon National Commission (SCNC) de Bamenda, aurait reçu des balles dans le ventre au rond point de l'hôpital à Bamenda alors qu'il se rendait à son travail, le 29 mars 1997 vers cinq heures du matin. Selon son témoignage, la seule raison à l'origine de cet acte serait son appartenance au SCNC. Il aurait été immédiatement emmené à l'hôpital où des militaires seraient venus le chercher pour l'amener au poste de gendarmerie dit up-station. Le commandant aurait alors ordonné à ces hommes de l'abandonner dans la véranda de l'hôpital et de l'y laisser mourir. Il serait alors resté une nuit à l'hôpital sans recevoir de traitement. Le lendemain matin, il aurait été transporté par ses parents à l'hôpital baptiste de Mbingo, où il aurait subi une intervention chirurgicale pendant plus de quatre heures. Il y serait ensuite resté, sous la surveillance de gendarmes, pendant 46 jours. À la fin de son traitement, il aurait été détenu à la gendarmerie dite up-station pendant 13 jours. Le 30 juillet, il aurait été transféré à la prison centrale de Yaoundé, où il est actuellement. Il souffrirait encore des suites de son opération et aurait une jambe paralysée suite aux balles qu'il aurait reçues.

27. Verve Christopher Mbinkar et Samuel Nde, des défenseurs des droits de l'homme, auraient été arrêtés avec d'autres défenseurs, le 31 mars 1997 alors que des membres des forces de l'ordre avaient été assassinés. Ils auraient été détenus à Bamenda pendant deux mois, pendant lesquels ils auraient été frappés à plusieurs reprises et privés de nourriture et de soins.

28. Ngalim Peter Mangong Tansa aurait été arrêté le 31 mars 1997 chez lui par des gendarmes qui l'auraient emmené à la gendarmerie de Kumbo. Il y aurait été violemment frappé par sept gendarmes. Le lendemain matin, il aurait été transféré à Bamenda dans un camion avec des dizaines d'autres prisonniers; tous auraient été obligés de se couvrir la tête avec un sac dans le but de les empêcher de respirer normalement; à chaque fois qu'ils retiraient le sac, ils auraient été frappés. Il aurait été détenu à Bamenda dans une cellule de 3 mètres sur 2,7 en compagnie de 48 autres détenus. Ils auraient été privés de nourriture et d'eau pendant les cinq premiers jours de leur détention. Ngalim Peter Mangong Tansa serait resté enfermé pendant deux mois sans pouvoir à aucun moment quitter sa cellule. Il aurait été frappé à plusieurs reprises et aurait été accusé d'être un membre du SCNC. Il aurait finalement été relâché à Bamenda sans aucun moyen de retourner chez lui à Kumbo, distant de 100 km.

29. Richard Ambe aurait été sorti de force du véhicule dans lequel il se trouvait avec d'autres gens le 1er avril 1997 à 7 heures du matin sur la route entre Bafut et Bamenda par des gendarmes. Tous auraient été frappés par ces gendarmes qui les auraient accusés d'avoir tué l'un des leurs. Ils auraient ensuite été emmenés à la légion de gendarmerie à Bamenda, où ils auraient été détenus au secret pendant un mois et trois semaines.

30. Selon les renseignements reçus, un certain nombre de personnes auraient été arrêtées et maltraitées lors de l'état d'urgence d'avril 1997 déclaré dans la province du Nord-Ouest, et en particulier dans le district de Kumbo.

Suivent les résumés des cas de certaines de ces personnes : Dominic Nyuyki aurait été arrêté en avril 1997 et détenu pendant deux semaines au poste de police de Kumbo. Il aurait ensuite été transféré à la gendarmerie de Kumbo où il aurait été frappé à plusieurs reprises. Il aurait finalement été emmené à la brigade mixte mobile de Bamenda où, accusé d'avoir pris la femme du Sous-Préfet, il aurait été frappé avec une ceinture sur la tête. Il aurait été détenu par la brigade pendant deux mois et aurait été relâché le 14 mai 1997.

Pascal Menadzem aurait été arrêté par une trentaine de soldats le 19 avril 1997 chez lui à Mhong Kumbo en compagnie de l'un de ses amis. Tous les deux auraient été roulés dans la boue, auraient reçu des coups de pieds et auraient été frappés avec des cannes en bois. Ils auraient finalement été emmenés, menottés, à la gendarmerie de Kumbo. Là, ils auraient été déshabillés et auraient reçu des coups de matraque, ainsi que des brûlures de cigarettes chaque matin. Ils auraient été enfermés dans une cellule de 4 mètres sur 3 avec 40 autres personnes. Pascal Menadzem serait tombé malade et aurait été amené dans une clinique privée par un gardien craignant pour sa vie. Il y aurait reçu un traitement médical pendant la journée et serait rentré chaque soir dans sa cellule, pendant un mois et cinq jours.

Anthony Ngalim Ngah et quatre de ses fils auraient été arrêtés chez eux à Kumbo dans la nuit du 19 avril 1997 par une trentaine de soldats. Ils auraient été couchés à terre et auraient ensuite reçu des coups de crosses d'armes, tout en étant questionnés sur leur appartenance à un parti politique. Les soldats auraient aussi tiré des coups de feu au-dessus de leur tête de manière à les effrayer. Ils auraient été détenus pendant un mois et cinq jours dans une cellule de 3 mètres sur 4 en compagnie de 45 autres détenus. Ils n'auraient par conséquent peu eu la possibilité de s'asseoir. Leurs proches auraient été obligés de payer les gardiens pour que de la nourriture et de l'eau leur parviennent. Ils auraient été battus chaque matin. Anthony Ngalim Ngah, âgé de 57 ans au moment des faits, continuerait à souffrir des suites de ces mauvais traitements. **Ngalim Sixtus Ayujika** aurait été arrêté le 19 avril 1997 chez lui à Ngondzeng par une trentaine de soldats. Il aurait été frappé violemment avant d'être conduit à la gendarmerie de Kumbo, où, nu, il aurait été détenu pendant trois semaines. **Frederick Maiben** aurait été arrêté chez lui par une trentaine de militaires le 19 avril 1997. Il aurait été menotté et battu. Il aurait été déshabillé et conduit à la gendarmerie de Kumbo, où il aurait été brûlé avec des cigarettes sur le bras et aurait reçu des coups de pieds dans le ventre. Il y serait resté pendant un mois et cinq jours. On aurait refusé à ses proches de lui amener de la nourriture. **Michael Nyuywir Wirsi** aurait été arrêté le 19 avril 1997 à cinq heures du matin par une trentaine de soldats chez lui à Ngondzeng. Il aurait frappé et aurait eu le genou droit fracturé avant d'être emmené à la brigade de gendarmerie de Kumbo. Il y serait resté pendant trois semaines, pendant lesquelles il aurait été frappé chaque matin. Il aurait été libéré après avoir payé 5 000 francs CFA aux gardiens. À sa libération, il aurait été traité pendant une semaine à l'hôpital de Shisong, mais son genou droit ne serait toujours pas guéri. **Bongmoyong Lifinus** aurait été arrêté le 19 avril 1997 à quatre heures du matin par une trentaine de soldats qui l'auraient battu. Il aurait été détenu pendant trois semaines à la gendarmerie de Bamenda. Il aurait été frappé tous les jours pendant sa détention et il porterait encore les marques de ces mauvais traitements. **Emmanuel Fondzenyuy** aurait été arrêté le 19 avril 1997 à Ngondzeng. Après avoir été détenu à la gendarmerie de Kumbo, il aurait été emmené le 21 à Bamenda où il serait resté enfermé pendant un mois et trois jours. Il y aurait été violemment battu.

Panka Nfon George aurait été arrêté le 23 avril 1997 chez lui à Ngondzeng par une trentaine de soldats. Il aurait été menotté et conduit avec 24 autres personnes à la gendarmerie de Kumbo. Il aurait reçu des coups de pieds sur les jambes. Un soldat aurait posé une arme contre sa tête et aurait tiré en l'air. Il serait resté nu dans une cellule de 3 mètres sur 4 en compagnie de 40 autres personnes. Après 30 jours, il aurait été emmené à Bamenda où il aurait été violemment frappé par ce qui a été appelé les "guerilla fighters". Il aurait été ramené le jour même à Kumbo, où il serait resté pendant un mois et cinq jours. Il serait encore sous traitement médical. Francis Kongivso aurait été arrêté chez lui à Shisong-Kumbo par huit hommes en uniforme, le 23 avril 1997. Ces derniers lui auraient pris de l'argent et l'auraient ensuite emmené à la gendarmerie où il aurait été frappé. Après deux jours, il aurait été relâché et conduit à l'hôpital de Shisong où il aurait subi une opération chirurgicale au niveau du ventre et serait resté un mois à l'hôpital. Dorothy Kiminla aurait été arrêtée par des militaires chez elle à Melim-Kumbo en présence de ses enfants et en lieu et place de son mari, Ngoran Emmanuel Fai, alors absent, le 23 avril 1997 à quatre heures du matin. Elle aurait été frappée violemment avec des matraques avant d'être jetée dans un camion. Elle aurait été détenue pendant quatre jours. Jusqu'à ce jour, elle n'a jamais été inculpée. Donatus Kongnso Wingo aurait été arrêté chez lui le 23 avril 1997 à Melim. Au moment de son arrestation, il aurait été frappé par les soldats et gendarmes venus le chercher (dont certains noms sont connus du Rapporteur spécial). Il aurait ensuite été emmené à la brigade de gendarmerie de Kumbo il y serait resté pendant une semaine. Fonlon Julius Ngoran aurait été arrêté chez lui à Mbiame, le 23 avril 1997. Il aurait eu les mains attachées dans le dos et un militaire lui aurait donné un coup de pied dans la poitrine. Il aurait aussi été obligé de grimper sur un rocher, les deux mains attachées dans le dos. Il aurait été détenu quelques jours. Ngoh Clement Dzelamunyuy aurait été arrêté le 23 avril 1997 par des gendarmes et militaires chez lui à Melim en compagnie de treize autres personnes. Il aurait été détenu dans plusieurs cellules à Kumbo, Bamenda et à Jakiri. Il aurait été frappé tous les jours pendant une semaine lors de sa détention à la brigade mixte mobile à Bamenda. Au total, il aurait été détenu pendant un mois. Thomas Nonong aurait été arrêté chez lui le 29 avril 1997, vers sept heures du matin. Il aurait été emmené à la brigade de Mbiame, puis à celle de Kumbo et ramené immédiatement à Mbiame. Durant le trajet, il aurait été frappé et aurait reçu des coups de pieds des militaires. Il aurait eu une jambe fracturée. Il aurait ensuite été détenu pendant un mois et demi, durant lequel il aurait contracté la pneumonie.

31. John Kohtem et quatre autres personnes originaires de Balikumbat, tous membres du SDF, auraient été arrêtés dans le but de les empêcher de participer aux élections législatives du 17 mai 1997. Ils auraient été arrêtés le 18 mai 1997 et détenus par la brigade mixte mobile de Bamenda jusqu'au 30 juin 1997. Ils auraient été violemment battus avec une canne à plusieurs reprises et soumis à la technique dite de la balançoire. John Kohtem, handicapé de naissance, n'aurait pas été soumis à ce traitement. Durant leur détention, ils n'auraient pas été interrogés, mais auraient appris que le Fon de Balikumbat, un opposant politique au SDF, les aurait accusés d'avoir commandé des armes pour se battre contre lui. Aucune charge n'aurait été pourtant retenue contre eux. On leur aurait dit que seul un ordre venant

de Yaoundé pouvait les remettre en liberté. Par une lettre datée du 18 juin 1998 et restée sans réponse, ils se seraient plaints auprès du Président de l'Assemblée nationale.

32. **La population de Ngondzeng** aurait été soumise durant les mois de mars et d'avril 1997 à des intimidations, menaces et mauvais traitements de la part de militaires. Lors de ces événements, un certain nombre d'habitants se seraient enfuis et cachés et de nombreuses propriétés auraient été brûlées. Dans l'après-midi du 30 mars, des soldats et gendarmes auraient paradé dans les rues de Ngondzeng de manière à intimider la population civile. Le 16 avril, 16 hommes (dont les noms sont connus du Rapporteur spécial) auraient été arrêtés et détenus à la brigade de gendarmerie de Kumbo où ils auraient été déshabillés et frappés. Treize auraient été libérés le 21 avril 1997; les trois derniers auraient été libérés le 21 mai 1997. Le 21 avril 1997, six autres hommes, membres du SCNC, et deux femmes ayant des enfants en bas âge, la femme et la soeur de Francis Wirngo, auraient été arrêtés, déshabillés et frappés au poste de gendarmerie de Kumbc, avant d'être transférés à Bamenda où ils auraient été soumis à des chocs électriques. Ils auraient ensuite été ramenés le jour même à Kumbo. Le fils âgé de 15 ans de Francis Wirngo aurait aussi été violemment frappé dans la propriété de son père le 21 avril 1997. Le 6 mai 1997, des soldats auraient à nouveau paradé dans les rues de Ngondzeng, menaçant et frappant au hasard les gens qui se trouvaient dans la rue. Ils auraient aussi confisqué des cartes d'identité qu'ils n'auraient rendues qu'après paiement de 1 000 francs CFA.

33. **Les populations des villages de Keyon, Elak, Jikejem, Ngashie, Lui, Ichim, Shingaah, Mbrancham, Nkwi, Fikeng, Jiyane, Bow, Feking, Mboh, Manchok, tous dans le district d'Oku/Bui,** auraient été l'objet d'actions similaires de la part des militaires dès la fin du mois de mars 1997 et jusqu'en décembre 1997. Les personnes qui n'auraient pas montré de sympathie à l'égard du CPDM, et en particulier les membres du SDF, auraient été les victimes des militaires. Plusieurs personnes, dont **Kotu Lot Makaj, Ngalim William et Tanffen Fabiany** (d'autres noms sont aussi connus du Rapporteur spécial), auraient été détenues pendant quelques jours et frappées. Six personnes seraient mortes, dont deux des suites des coups qu'elles auraient reçus. **Yunkase Babe**, le maire d'Oku, aurait été arrêté sur ordre du Gouverneur qui l'aurait fait transférer à la brigade mixte mobile de Bamenda, où il aurait été détenu et interrogé sous la menace d'une arme pendant dix jours.

34. **Ndifet Zacharia Khan**, en faveur duquel le Rapporteur spécial avait déjà envoyé une communication en 1997 (E/CN.4/1998/38/Add.1, par. 46), a pu fournir de nouveaux renseignements au Rapporteur spécial lors d'une interview le 19 mai 1999. Il aurait été arrêté le 11 avril 1997 à Mezam/Bamenda et emmené au poste de police de Bamenda où il aurait été déshabillé et suspendu par les bras tout en étant frappé avec des matraques en plastique sur les jambes. Il aurait fini par perdre connaissance. Il y serait resté trois jours pendant lesquels il aurait été interrogé sur des personnes dont il ne connaissait pas l'existence. Il aurait ensuite été transféré à la gendarmerie dite up-station et dans un hôpital militaire où il aurait été traité pendant deux mois. Il aurait été transféré à l'hôpital militaire de Yaoundé. Il aurait été à plusieurs reprises opéré, et, en particulier, aurait eu plusieurs doigts des deux pieds amputés. Selon ses certificats médicaux (dont le Rapporteur spécial possède des copies), il présente

de nombreuses séquelles cutanées et osseuses (chéloïdes, cicatrices rétractiles et ostéites des membres inférieurs). N'ayant plus de moyens financiers pour se payer son traitement médical, il aurait été incarcéré à Kondengui à Yaoundé le 18 septembre 1998, où, grâce à des soeurs catholiques, il aurait pu obtenir des médicaments. Au moment de l'interview, l'état de santé de Ndifet Zacharia Khan paraissait encore nécessiter une sérieuse attention médicale, dont plusieurs opérations chirurgicales, selon ses certificats médicaux.

35. Yves Djomo, un jeune homme de 38 ans, aurait été arrêté le 11 août 1997 et emmené à la prison centrale de New Bell à Douala. Il aurait été condamné à 18 mois de prison pour vol. Peu après, il serait gravement tombé malade. Sans soins, il aurait réussi à réunir 3 000 francs CFA qu'il aurait remis à un gardien pour que ce dernier le conduise à l'hôpital. Il n'aurait reçu que du sirop en retour et serait finalement décédé dans la cour de la prison, le 27 décembre 1997.

36. M. Baomock aurait été arrêté le 13 septembre 1997 à son domicile et placé en garde à vue dans les locaux de la police judiciaire à Douala. Il y aurait trouvé la mort le 17 septembre 1997 des suites des tortures qu'il aurait subies. Son corps aurait en particulier porté des traces de brûlures de cigarettes.

37. Philip Njaru, un journaliste et défenseur des droits de l'homme, aurait subi à plusieurs reprises des intimidations et mauvais traitements en raison de ses articles dénonçant les violations des droits de l'homme et la corruption. Il aurait en particulier été arrêté le 12 octobre 1997 lors de l'élection présidentielle alors qu'il surveillait le bureau de vote de la base militaire du onzième bataillon naval d'Ekondo Titi. Il aurait été interrogé et intimidé par le commandant de ce camp. Le même jour, il aurait été attaqué par le chef des services de l'immigration (dont le nom est connu du Rapporteur spécial) qui aurait voulu venger un collègue accusé par Philip Njaru d'avoir violé une femme enceinte de nationalité nigériane. Il aurait été frappé, aurait reçu des coups de pieds et aurait eu la mâchoire brisée. Il aurait aussi perdu l'ouïe de l'oreille gauche. Il aurait reçu un traitement médical à l'hôpital. Le 20 février 1998, il aurait été arrêté à l'hôpital d'Ekondo Titi par quatre policiers suite à un article dans lequel il accusait leur chef, le chef des services d'immigration mentionné ci-dessus, de corruption. Ce dernier l'aurait à nouveau interrogé et menacé. Il se serait plusieurs fois plaint aux autorités compétentes sans jamais recevoir de réponse.

38. Chief C. Mondji S.M. III, un chef traditionnel à Pinyin et membre du SDF, aurait été arrêté le 21 octobre 1997 et détenu à la gendarmerie de Bamenda dite up-station jusqu'au 18 décembre 1997. Au moment de son arrestation il aurait été frappé, et aurait continué à être frappé à l'aide de matraques en plastique les deux premières semaines de sa détention. Il aurait aussi été menacé de disparaître s'il ne démissionnait pas de son parti.

39. Suzanne Fondgem aurait été condamnée pour recel de malfaiteurs. En novembre 1997, elle aurait été interrogée au commissariat de police du neuvième arrondissement à Douala (pendant un mois) et au commissariat central de Douala (pendant trois jours). Elle aurait été frappée avec

des machettes sur les jambes pendant deux jours, matin et soir, et aurait fini par signer le troisième jour une déclaration. Sa condamnation n'aurait pas encore été confirmée par le tribunal de grande instance.

40. **Bouba Gazawa**, un boucher âgé de 90 ans, aurait fait l'objet d'un vol commis par un proche du lamido de Djalégué au début de 1998. S'étant plaint, le lamido aurait ordonné à ses gardes de le fouetter et de le détenir à la gendarmerie de Mokolo. Il y serait resté enfermé pendant trois jours, les gendarmes ne faisant qu'obéir aux ordres du lamido. Bouba Gazawa aurait finalement été déféré devant le parquet pour troubles à l'ordre public. Le procureur aurait néanmoins pris son parti et lui aurait donné de l'argent pour qu'il se procure un certificat médical, qui indiquerait 22 jours d'incapacité temporaire. Il aurait alors décidé de porter plainte contre le lamido auprès du procureur de Mokolo. Le chef d'accusation contre le lamido aurait été la torture. Ce dernier aurait été relaxé par le tribunal de Mokolo pour faits infondés en décembre 1998. Le jugement aurait été confirmé en appel en mai 1999. Au moment de l'interview (17 mai 1999), Bouba Gazawa avait décidé de se pourvoir en cassation à Yaoundé.

41. **William Abang Akam**, le leader du SDF à Widikum-Menka, aurait été arrêté sur la voie publique au début de 1998 par le préfet qui lui aurait demandé de lui montrer une pétition qu'il aurait écrite à propos d'un problème de succession de chefs traditionnels. Sur ordre du préfet, il aurait été emmené à la gendarmerie de Widikum, où il aurait été violemment battu avec des matraques en plastique. Il aurait été relâché le lendemain pour aller chercher une copie de cette pétition, qu'il aurait donnée au leader provincial du SDF qui l'aurait remise au préfet. Le 1er octobre 1998, il aurait été néanmoins arrêté pour la même affaire par le préfet. Il aurait été emmené de nouveau à la gendarmerie de Widikum, où, à nouveau sous les ordres du préfet, il aurait été frappé. Il serait resté trois jours en détention. Le commandant de la gendarmerie serait alors intervenu à son arrivée et aurait demandé au préfet sa libération.

42. **Hamadou Mana**, dit Agnana, serait décédé le 22 janvier 1998 à la prison centrale de Maroua après avoir été bastonné par les gardiens pour avoir tenté de s'évader. Selon le certificat médico-légal, la cause de son décès serait un traumatisme crânien.

43. **Wasi Christian Tarla** aurait été arrêté chez lui le 15 février 1998 par deux gendarmes de Kumbo et aurait été emmené à la gendarmerie de Kumbo. Le même jour, il aurait été transféré à la brigade de Jakiri. Il y aurait été enfermé au secret jusqu'au 19 février dans une cellule de 10 mètres sur 2 en compagnie de 17 autres détenus. Le 19 février, il aurait été interrogé par un gradé (dont le nom est connu du Rapporteur spécial) qui lui aurait indiqué que les seules réponses possibles étaient "oui" et que chaque fois qu'il dirait "non", il le tailladerait. Il aurait alors été obligé de se coucher à terre, un gendarme assis sur ses jambes. À chaque réponse négative, il aurait reçu un coup de machette sur les pieds, en particulier sur le pied gauche, et aurait été frappé avec une matraque en plastique. Il aurait reçu cinq coupures. Il aurait été libéré et conduit à l'hôpital de Jakiri, puis de Kumbo, étant donné la gravité de son état. Le 26 février, un certificat médical (dont le Rapporteur spécial possède une copie) indique la présence de profondes lacérations au pied gauche et recommande une incapacité

de 20 jours. Mais, n'ayant jamais totalement récupéré, un nouveau certificat médical (dont le Rapporteur spécial possède une copie) émis le 6 février 1999 indique une incapacité de 12 mois renouvelables. Il continuerait d'ailleurs à recevoir un traitement médical à l'hôpital. Il se serait plaint du traitement reçu auprès du procureur qui aurait demandé au commandant de Kumbo d'initier une enquête. Un adjudant aurait interrogé à ce propos Wasi Christian Tarla sur son lit d'hôpital. Ce dernier aurait aussi envoyé des plaintes (dont le Rapporteur spécial possède des copies) au Ministre délégué auprès de la Présidence chargé de la défense (le 25 février), au procureur général de la province du Nord-Ouest (le 28 février) et au directeur du tribunal militaire (le 3 mars) et autres personnes compétentes. Il n'aurait à ce jour aucune nouvelle concernant sa plainte. Le 2 mars 1999, il aurait été appelé à se présenter devant la cour de première instance de Jakiri pour répondre de plusieurs inculpations qui seraient fallacieuses et qui auraient été basées sur son interrogatoire à la gendarmerie de Kumbo.

44. **Augustine Ndamang**, Vice-Président du SCNC, aurait été arrêté le 29 avril 1998 et détenu par la brigade mixte mobile de Bamenda. Selon les informations reçues, il aurait été arrêté pour avoir intenté une action en justice contre un membre du parti au pouvoir. Il aurait appris qu'il était accusé d'être à l'origine d'actes terroristes, mais n'aurait jamais été formellement inculpé. Enfermé durant trois semaines dans une cellule sans lumière, la seule ouverture donnant directement sur un mur, il aurait eu à nettoyer à mains nues les toilettes qui se trouvaient dans cette cellule. Il n'aurait pas été interrogé et n'aurait jamais vu de procureur. **Mbunwei Patrick**, le Secrétaire général du SCNC, aurait été arrêté et détenu dans les mêmes conditions qu'Augustine Ndamang.

45. **Amadou Bagonde** aurait été arrêté une nuit de juillet 1998 par les antigangs du colonel Pom à Maroua. Lui, ses deux femmes, **Adja**, enceinte de trois mois, et **Fatima**, et leurs enfants, auraient été frappés à leur domicile avec la crosse des fusils. **Adja** aurait avorté sur place des suites des coups qu'elle aurait reçus. **Amadou Bagonde** aurait été déshabillé et emmené dans un véhicule alors qu'il agonisait. Le Président du Mouvement pour la défense des droits de l'homme et des libertés se serait présenté chez le colonel Pom qui aurait dit ne pas se préoccuper de ce qui arrivait aux personnes arrêtées par ses agents. La famille d'Amadou Bagonde aurait appris sa mort par oui-dire. Plus tard, le colonel Pom aurait confirmé qu'il détenait **Amadou Bagonde**, mais que personne ne devrait se plaindre du traitement dont il ferait l'objet étant donné qu'il s'agissait d'un coupeur de routes.

46. **Hilaire Nyambe** aurait été arrêté le 3 septembre 1998 et détenu pendant 11 jours au commissariat du huitième arrondissement à Douala, où il aurait été soumis à la technique dite de la balançoire trois fois par jour. Il aurait fini par signer le procès-verbal de l'interrogatoire, dans lequel il n'aurait pas reconnu les faits dont il était accusé. Il serait détenu à New Bell depuis le 14 septembre 1998.

47. La population d'**Obala** aurait été l'objet de mauvais traitements de la part de membres de la garde présidentielle suite à un accident de la route dans lequel la moto transportant un lieutenant de cette garde (dont le nom est connu du Rapporteur spécial) aurait renversé un enfant. Ce lieutenant aurait refusé que le motard conduise l'enfant à l'hôpital,

ce qui aurait provoqué une vive colère de la part de la population présente. Ce lieutenant serait ensuite revenu une demi-heure plus tard accompagné de 200 recrues qui se seraient livrées à des bastonnades. Une cinquantaine de personnes auraient été blessées. Informé de ces incidents, le chef de bataillon aurait promis aux blessés une aide médicale qui n'aurait pourtant jamais été prodiguée.

48. **La population civile de Limbé** aurait été violemment maltraitée par des soldats venant de Man-O-War Bay dans la nuit du 13 novembre 1998. Ces soldats auraient frappé de manière indiscriminée plusieurs personnes, dont plusieurs femmes et un policier, avec des ceinturons et des gourdins. Au moins quatorze personnes auraient ensuite dû recevoir des soins médicaux à l'hôpital de Limbé.

49. **Pierre Djomou** aurait été arrêté sur fausse dénonciation d'un voleur qui voulait se venger de lui. Il aurait été appréhendé sur la voie publique par trois membres des antigangs de la gendarmerie de Bonanjo, à Douala, le 16 novembre 1998, vers midi. Il aurait été emmené à la gendarmerie de Nkongsamba. Les gendarmes auraient refusé qu'il prévienne sa famille. Il aurait été enfermé dans une cellule de 2 mètres sur 3 avec une dizaine d'autres personnes. Il aurait été transféré le soir même à Douala. Là, il aurait été soumis à la technique dite de la balançoire et fouetté avec des câbles électriques sur la plante des pieds, les jambes et le dos. Le major présent aurait intimé l'ordre à ses subordonnés de le faire saigner. Après trois heures de ce traitement qui aurait eu pour but de l'incriminer dans les actes du voleur mentionné ci-dessus, il aurait été jeté en cellule. Le 29 novembre, il aurait été amené devant un adjudant qui aurait ordonné qu'il soit soumis de nouveau à la balançoire. Il aurait été soumis pendant une heure à cette torture. Il aurait néanmoins refusé de signer une déclaration l'incriminant. Le 1er décembre 1998, il aurait été sorti de sa cellule et emmené dans la cour du poste de gendarmerie où, avec une pancarte sur laquelle aurait été écrit son nom à son cou, il aurait été filmé et présenté par la télévision nationale et la presse écrite comme voleur. Il aurait finalement été conduit à l'infirmerie de la garnison le 4 décembre. Le médecin aurait alors recommandé qu'il soit hospitalisé. Mais, comme aucun garde n'était disponible, il aurait reçu tous ses soins en cellule. Le 11 décembre, il aurait été transféré à la prison de New Bell où il se trouverait toujours aujourd'hui.

50. **Thérèse Kanga**, épouse Kouekam, aurait été arrêtée le 18 novembre 1998 au commissariat du onzième arrondissement de Douala, alors qu'elle s'y serait rendue sur convocation pour une question de constructions sur un terrain ne lui appartenant pas. Elle y aurait été frappée avec une machette sur la tête (5 coups) et sur la plante des pieds (20 coups) par une gardienne de la paix (dont le nom est connu du Rapporteur spécial). Cette dernière aurait aussi placé un embout en métal sur la pointe de sa chaussure avant de donner des coups de pieds à Thérèse Kanga. Cette dernière aurait ensuite été enfermée dans les toilettes pendant une heure. Elle aurait finalement été mise en cellule. Le commissaire arrivé le soir l'aurait libérée tout en condamnant la manière dont elle aurait été traitée, mais en l'obligeant à nettoyer le poste de police avec un balai avant de la relâcher. Il aurait aussi gardé sa carte d'identité nationale. Un certificat médical daté du 20 novembre 1998

(dont le Rapporteur spécial possède une copie) indique la présence de nombreux hématomes et oedèmes sur son corps, en particulier sur ses membres inférieurs.

51. **Ngwainbi Peter Nsom** aurait été arrêté au mois de novembre 1998 et détenu pendant 31 jours à la gendarmerie de Fundong où il aurait été plusieurs fois frappé, ce qui aurait entraîné des dommages internes, en particulier aux reins.

52. **Issa Pefoura**, imam de la mosquée de Kounga, à Foubam, département du Noun, aurait été appelé le 25 décembre 1998 auprès du sultan de Bamoun, sans pourtant avoir reçu de convocation officielle des pouvoirs publics. Il aurait d'abord refusé, puis aurait été emmené de force au commissariat de police de Foubam sous prétexte qu'il aurait insulté le sultan. Du commissariat, il aurait été conduit par le commissaire et un inspecteur en civil, ainsi que le sous-préfet au palais du sultan où ce dernier aurait ordonné à ses serviteurs de le frapper. Craignant pour la vie de l'imam, le commissaire serait intervenu pour stopper cette bastonnade après 15 minutes. Par contre, le sous-préfet aurait empêché un enfant qui se trouvait là d'aller prévenir des membres de la communauté musulmane. Le sultan aurait ensuite ordonné que la mosquée soit fermée et que l'imam soit emprisonné. Ce dernier aurait néanmoins été relâché le jour même et aurait porté plainte contre le sultan. Il aurait ensuite été harcelé à plusieurs reprises par la police. Le préfet aurait aussi demandé à l'imam de laisser l'administration territoriale en dehors de cette affaire. Le 29 décembre 1998, Issa Pefoura aurait reçu une convocation du commissariat de police, à laquelle il n'aurait pas donné suite. Le 6 janvier 1999, le préfet de Foubam aurait demandé qu'Issa Pefoura ne conduise plus la prière. Selon ce dernier, il aurait été traité ainsi en raison de son appartenance à l'Union démocratique du Cameroun (UDC), parti de l'opposition.

53. **Idris Karim Buba**, **Sale Jibbo** et **Issa Adamu** auraient été accusés d'avoir volé des vaches au fon de Balinyonga. Ce dernier aurait alors ordonné qu'ils soient battus et brûlés vifs en public, le 3 février 1999. Suite à des plaintes, le procureur aurait signé un mandat d'amener contre le fon, mais les policiers chargés de son arrestation au début du mois de mai l'aurait intentionnellement laissé s'échapper. Le fon aurait par ailleurs publié une déclaration dans laquelle il dément avoir ordonné que les trois jeunes soient brûlés. D'autres personnes auraient depuis été arrêtées pour le vol de ces vaches et seraient détenues à la prison de Bamenda.

54. **Stephen Nchamukong**, vice-président du SDF à Bamenda, aurait été arrêté le 17 février 1999, en relation avec un rassemblement de son parti autorisé par les autorités qui s'était déroulé cinq jours auparavant. Il aurait été arrêté par deux hommes en civil, dont l'un a été formellement reconnu par Stephen Nchamukong comme étant un gendarme, ainsi que par sept hommes armés et en uniforme. Il aurait été emmené à la gendarmerie dite Terr Makon à Bamenda, où il aurait eu les mains menottées derrière le dos, après avoir été déshabillé. Sa carte d'identité aurait été confisquée à ce moment-là et ne lui aurait toujours pas été rendue. Il aurait ensuite été transféré à la brigade de gendarmerie dite up-station et jeté en cellule. À son arrivée en cellule, il aurait eu à payer la "new man tax" se montant à 2 500 francs CFA, dont 2 000 sont dûs aux gardiens, le reste servant à acheter de la nourriture. À cause des menottes trop serrées, son sang aurait eu du mal à circuler dans

ses doigts durant la première nuit. Il aurait par conséquent perdu la mobilité de certains de ses doigts. Le lendemain matin, il aurait été interrogé à propos du tract appelant au rassemblement mentionné ci-dessus trouvé sur lui au moment de son arrestation. Les gendarmes auraient cherché à lui faire signer une déclaration indiquant qu'il avait été arrêté alors qu'il distribuait des tracts visant à perturber l'ordre public. La troisième nuit, un capitaine de gendarmerie et quelques collègues, apparemment saouls, seraient entrés dans sa cellule pour l'insulter, lui et son parti, et le menacer. Chaque fois que Stephen Nchamukong aurait rétorqué à ces insultes, il aurait été frappé 20 à 30 fois sur la plante des pieds avec une matraque en plastique, et ensuite obligé de danser la *masuka*. De tels agissements de la part des gendarmes auraient eu lieu pendant les six nuits suivantes. Chaque matin, un autre gendarme serait venu le menacer et le frapper lui et ses codétenus de manière à leur soutirer de l'argent. Le 23 février 1999, il aurait à nouveau été interrogé à propos de ses activités politiques par un gendarme en civil qui l'aurait frappé sur la plante des pieds pendant plus d'une heure. Il aurait finalement fait une déclaration en anglais, mais elle aurait été consignée en français, langue que Stephen Nchamukong ne comprend pas. Le même jour, le procureur à qui il se serait plaint de ces traitements aurait refusé de le mettre en liberté conditionnelle sous prétexte qu'il ne pouvait trouver la disposition du Code pénal en vertu de laquelle il était détenu. Le 25 février, le même procureur l'aurait fait transférer à la prison centrale de Bamenda, soi-disant parce qu'il était un opposant politique. Après 10 jours de détention, sa santé se serait gravement détériorée. Il aurait été mis en liberté conditionnelle le 10 mars 1999. Le lendemain, il a obtenu un certificat médical (dont le Rapporteur spécial possède une copie) qui mentionne 60 jours d'incapacité temporaire. Son procès n'a toujours pas eu lieu et il ne sait de quoi il est réellement accusé. Il n'aurait pas formellement déposé plainte pour ces mauvais traitements car il ne pense pas qu'une telle plainte pourrait aboutir.

55. **Boukar Laina** aurait été accusée de sorcellerie par sa voisine, à Maga, en mars 1999. Le mari de cette dernière aurait décidé de l'enchaîner chez lui pendant 17 jours et l'aurait battue. Le mari aurait, selon lui, agi sur recommandation du commandant de brigade et du sous-préfet. En avril 1999, elle aurait déposé plainte auprès du procureur de Yagova qui aurait émis un mandat d'arrêt contre le voisin, mandat qui n'aurait jamais été mis en oeuvre par le commandant de brigade.

56. **François Blaise Omam**, condamné à 25 ans de prison pour vol aggravé et actuellement à New Bell à Douala, aurait eu son "kito", abri spontané construit dans la cour de New Bell, détruit le 3 mars 1999 par les gardiens. La destruction de son "kito" aurait été justifiée par le fait qu'il était soupçonné de vendre de la drogue dans l'enceinte de la prison. Cette accusation aurait en fait été inventée par les gardiens de manière à le punir pour avoir mené des enquêtes en utilisant la manière forte pour retrouver de l'argent qui lui aurait été volé. Lors de la destruction de son "kito", les gardiens l'auraient empêché de récupérer ses affaires personnelles et en particulier son argent. Il aurait alors été emmené au parloir où il aurait été frappé avec une matraque en bois, selon lui, sur ordre du régisseur. Il se serait échappé des mains des gardiens qui l'auraient poursuivi jusqu'aux fosses septiques où il les aurait aspergés d'excréments. Il aurait finalement été ramené au parloir par le régisseur qui aurait ordonné, selon ce dernier,

pour calmer ses gardiens, qu'il soit battu. Des seaux d'eau lui auraient aussi été versés sur la tête. Il aurait ensuite été enchaîné aux pieds et aux mains et jeté dans un local où sont habituellement jetés les déchets. Il y serait resté 13 jours sans recevoir de nourriture des gardiens.

57. **Bertrand Nfor** aurait été arrêté le 3 mars 1999 par la brigade antigang de Douala et aurait été accusé d'un vol. Il aurait reçu des coups de crosse de fusil à la gendarmerie de Bonanjo et aurait fini par perdre connaissance. Il aurait été soumis à la technique dite de la balançoire deux fois par jour pendant sept jours afin de lui extorquer des aveux. Il n'aurait pourtant signé aucune déclaration. Des blessures aux mains, aux pieds et au dos étaient encore visibles le jour de l'interview (16 mai 1999). Il serait gardé à vue à New Bell depuis.

58. **Honorine Dongang** aurait été arrêtée au mois de mars 1999 pour recel de vols et parce que son mari, soupçonné d'avoir commis ces vols, n'aurait pu être arrêté. Lors de son interview (20 mai 1999), elle était détenue au poste de la police judiciaire de Yaoundé avec son enfant âgé de 9 mois et dormait sur une paille au milieu du hall d'entrée du commissariat. Depuis le début de sa détention, elle n'avait vu aucun procureur.

59. **Joseph Chia Gwedji** aurait été arrêté le 1er mars 1999 par le commandant de la gendarmerie de Boyo en civil (dont le nom est connu du Rapporteur spécial) alors qu'il buvait un verre en sa compagnie et celle d'un de ses amis à Balo. Sans raison, le commandant aurait demandé à Joseph Chia Gwedji de vider son sac, ce qu'il aurait refusé de faire. Ce dernier aurait alors été frappé par le commandant et deux autres gendarmes qui auraient été appelés pour procéder à l'arrestation. Il aurait été emmené à la gendarmerie où il aurait été frappé avec des matraques en plastique pendant une heure. Il aurait été menacé de mort à plusieurs reprises, mais il n'en connaîtrait pas les raisons. Il aurait été détenu pendant sept jours à moitié nu dans une cellule de la gendarmerie de Balo. Le deuxième jour de sa détention, il aurait été informé par un gendarme que le sous-préfet (dont le nom est connu du Rapporteur spécial), qu'il n'a jamais rencontré, aurait ordonné sa détention administrative pour banditisme. Il n'aurait été interrogé que le cinquième jour de sa détention. Il aurait signé une déclaration se rapportant à son arrestation dans le bar en français, alors qu'il aurait fait sa déclaration en anglais, sa langue maternelle. Le 12 mars 1999, il aurait obtenu un certificat médico-légal (dont le Rapporteur spécial possède une copie) qui indique la présence de contusions sur tout le corps et préconise un arrêt temporaire de 33 jours. Le même jour, il aurait envoyé une lettre au procureur, à laquelle il n'aurait pas reçu de réponse à la date de l'interview (14 mai 1999). Selon les informations reçues, il aurait néanmoins dû, selon la loi, recevoir un accusé de réception du procureur dans un délai raisonnable. Précédemment, il aurait déjà été soumis à des mauvais traitements le 4 janvier 1996 alors qu'il se serait trouvé avec des amis dans un bar. Le délégué provincial à la sûreté nationale aurait ordonné son arrestation sans motif. Il aurait été frappé par des membres de la brigade mixte mobile venus l'arrêter. Il aurait ensuite été emmené à la police mobile d'intervention à Bamenda, d'où il aurait été relâché deux jours plus tard sans avoir été inculqué et sans avoir eu à signer de déclaration. Il aurait reçu un certificat médical indiquant une incapacité temporaire de 30 jours due aux coups qu'il aurait reçus.

À l'époque, il n'aurait pas su qu'il pouvait se plaindre des mauvais traitements dont il avait fait l'objet.

60. **Les enfants du Foyer de Nylon** à Douala auraient été l'objet d'une attaque des policiers du huitième arrondissement dans la nuit du 17 mars 1999, vers 5 heures du matin. Ils auraient été à la recherche d'un bandit qui se serait caché dans le foyer. Les policiers seraient entrés dans le foyer par effraction en escaladant le mur d'enceinte et sans chercher à rencontrer les responsables de l'établissement. Ils auraient mis tous les enfants à genoux les bras posés sur la tête; ils les auraient bastonnés et leur auraient donné des coups de pieds. **David Goufan** aurait été menacé avec un revolver dans la bouche. **Jean Eric Ntogue** et **Gédéon Tontcha** auraient été blessés par balles, respectivement, à la poitrine et à l'abdomen. **Sept enfants** et le directeur de la Chaîne des foyers Saint Nicodème/Enfance en difficulté, **Jean-Luc Ketcha**, auraient été forcés à coups de crosse de fusil à se rendre au commissariat où les enfants auraient été tabassés. En particulier, les deux blessés auraient reçu des coups de machette sur la plante des pieds. **Gédéon Tontcha** aurait été menotté et jeté dans une cellule. Le directeur se serait vu refuser le droit de téléphoner ou de conduire les enfants blessés à l'hôpital. Les policiers auraient finalement avoué avoir commis une erreur et avoir agi sur la base d'une fausse information. Selon les informations reçues, une des enfants du foyer, **Eric Magloire Kuate**, se serait enfui trois mois auparavant; arrêté pour vol la même nuit, il aurait été torturé au commissariat du huitième arrondissement et aurait déclaré avoir un complice dans le foyer. Selon les informations reçues, il aurait mentionné le foyer de manière à obtenir de l'aide des membres de ce dernier.

61. **Denis Nzitchem** aurait été bastonné suite à une tentative d'évasion de la prison de New Bell le 25 mars 1999. Il aurait été ramené au parloir de la prison où il aurait été bastonné et frappé avec des matraques en bois. L'infirmière de la prison aurait refusé de le soigner car elle n'aurait pas pu lui prodiguer les soins adéquats. Il aurait finalement été enfermé seul dans un entrepôt où il aurait trouvé la mort pendant la nuit. D'après le certificat médical (dont le Rapporteur spécial possède une copie), son corps présente de multiples contusions et oedèmes, en particulier sur le visage, les épaules et les jambes. La cause du décès serait un traumatisme crânien et de multiples fractures à la base du crâne avec hémorragie cérébrale. Il aurait été retrouvé mort les mains menottées derrière le dos. Le médecin qui a établi le certificat médical en question aurait depuis subi des pressions pour qu'il en change le contenu. Selon le régisseur de New Bell, il aurait été frappé par la population lorsqu'il aurait été arrêté sur la voie publique après son évasion avant d'être ramené à la prison, ce qui a été démenti par d'autres sources d'information. Le régisseur l'aurait à ce moment-là sauvé des mains de ses gardiens qui voulaient lui donner une leçon. Il l'aurait placé en cellule disciplinaire car il aurait estimé que son état physique ne nécessitait pas de surveillance particulière. Le procureur qui se serait rendu sur place pour calmer les autres détenus ayant appris la mort de **Denis Nzitchem** aurait annoncé qu'il initierait des poursuites.

62. **Richard Ewane** aurait été arrêté, en compagnie de trois autres personnes qui attendaient le bus avec lui, le 26 mars 1999 au matin, au motel de Kousséri. Il aurait été arrêté par quatre hommes en civil se présentant comme membres de la légion de gendarmerie. Il aurait été frappé, menotté et menacé

d'être exécuté. Il aurait ensuite été emmené à la gendarmerie de Kousséri où il aurait été enfermé dans une cellule pendant une nuit. Le lendemain, il aurait été amené à la brigade territoriale à Maroua, où il serait resté au secret pendant trois semaines enchaîné et sans nourriture. Le Président du Mouvement pour la défense des droits de l'homme et des libertés serait venu et se serait plaint au procureur. Ce dernier aurait répondu qu'il n'avait pas le pouvoir de contrôler les cellules où étaient détenus les personnes arrêtées par les antigangs du colonel Fom. D'après les informations reçues, une des cellules de la brigade de gendarmerie serait en effet utilisée par les antigangs lorsque leurs propres cellules seraient pleines. Lors de sa libération, Richard Ewane se serait plaint auprès du commandant de la légion qui lui aurait répondu qu'il n'avait pas été au courant de sa détention, bien qu'un procès-verbal semble avoir été signé par Richard Ewane. Il n'aurait reçu aucune explication sur les raisons de sa détention, mais pense qu'il aurait été soupçonné d'être un coupeur de routes. Le Président du Mouvement aurait déposé plainte auprès du Commissaire du Gouvernement et des tribunaux militaires de Garoua.

63. **Denis Etuge** aurait été arrêté chez lui le 6 avril 1999 et emmené au poste de police J.M.I. à Douala, où, accusé de possession illégale d'armes, il aurait été soumis à la technique dite de la balançoire pendant six jours, chaque soir. Après le troisième jour, il aurait été forcé de signer une déclaration écrite par un policier alors qu'il niait les faits. Il ne sait pas pourquoi il a été soumis les trois jours suivants à la technique de la balançoire. Le sixième jour, un policier lui aurait tiré dans un pied. Il serait encore resté deux semaines dans ce commissariat. Il aurait ensuite été transféré à la police judiciaire, où pendant deux matins, il aurait été soumis à la technique de la balançoire. Il aurait fini par être déféré au tribunal militaire où il n'aurait pourtant vu aucun magistrat. Depuis le 3 mai, il aurait été en garde à vue à la prison de New Bell à Douala. Il n'aurait été l'objet d'aucun traitement médical pour les blessures ayant résulté des mauvais traitements subis lors de ses interrogatoires. Au moment de l'interview (16 mai 1999), de récentes cicatrices sur son dos, ses mains et ses pieds, ainsi qu'une blessure infectée et vraisemblablement laissée par une balle, étaient clairement visibles.

64. **Mbinkar Arouna** aurait été arrêté chez lui le 8 avril 1999 par des gendarmes qui l'auraient emmené à la brigade de Mbiame, puis de Kumbo. Il y aurait été déshabillé et frappé à la tête, sur les jambes et le ventre avec des matraques en plastique et aurait reçu des coups de pieds. Il aurait été libéré 25 jours plus tard. Il continuerait de souffrir physiquement des suites de ces mauvais traitements, et aurait en particulier perdu une partie de son ouïe.

65. **Mbem Otto Eugène** aurait été arrêté par cinq membres des antigangs de la police judiciaire (PJ) de Yaoundé le 16 avril 1999 sur ordre de son beau-frère, un commissaire retraité de la PJ (dont le nom est connu du Rapporteur spécial). Il aurait été emmené à la PJ où il aurait été maltraité durant une heure et demie par ces cinq antigangs sur ordre de son beau-frère : il aurait été frappé sur la plante des pieds avec des machettes, et ensuite, forcé à sauter depuis un escalier; frappé avec un gourdin en bois sur les chevilles, avec une matraque en plastique sur le bas du dos et les fesses; menotté de manière à lui faire entrer les menottes dans la chair. Aucun

responsable de la PJ n'aurait été au courant de ce qui s'était passé. Il a obtenu un certificat médical daté du 21 avril 1999 (dont le Rapporteur spécial possède une copie), dans lequel il est indiqué une période de trente jours d'incapacité temporaire de travail. Ce certificat indique la présence d'œdèmes sur les doigts de la main et les poignets, de nombreux hématomes sur le corps, en particulier sur la plante des pieds, et d'une plaie au tibia. Il aurait déposé plainte auprès du procureur le 26 avril 1999. Il ne pourrait néanmoins pas se constituer partie civile n'ayant pas la somme (26 000 francs CFA) requise.

66. Justin Chin aurait été arrêté le 19 avril 1999 à 5 heures du matin chez lui par sept gendarmes. Ces derniers auraient été à la recherche d'armes à feu prétendument cachées dans sa maison. Ils auraient menacé de frapper sa fille âgée de 15 ans et auraient frappé Justin Chin avec une machette. Ils l'auraient emmené à la brigade de Kumbo, où il aurait été déshabillé et laissé sans nourriture, ni eau. Il y aurait été détenu pendant trois semaines.

67. Dix jeunes du village de Batoké, dans la région de Limbé, dont Dambe Richard Tando, Christopher Akwa Tando et une jeune fille de 17 ans, Hannah Luba, qui se seraient plaints, dans une lettre datée du 23 avril 1999 envoyée au préfet, au sous-préfet, au gouverneur et au chef traditionnel du village, des pratiques de corruption de l'équipe en charge de l'évaluation des dommages subis par la population suite à la récente éruption du Mont Cameroun, auraient été arrêtés et emmenés à la brigade de gendarmerie de Limbé le 30 avril 1999. Ils y auraient été frappés sur la plante des pieds, sur ordre du sous-préfet de Limbé. Après 24 heures, le procureur de Limbé aurait demandé leur liberté conditionnelle, ce qu'aurait refusé le Commissioner of Public Security. Le 3 mai 1999, ils auraient été emmenés sur ordre du sous-préfet à la gendarmerie de SO.NA.RA., où ils auraient été détenus pendant 5 jours. Tout traitement médical pour les blessures ayant résulté des mauvais traitements subis les premiers jours de leur détention leur aurait été refusé. À aucun moment, ils n'auraient été informés des raisons pour lesquelles ils étaient détenus.

68. Mebenga Mvogo aurait été arrêté chez un ami à Yaoundé au début du mois de mai 1999. Il aurait été accusé de vol. Il aurait été détenu à la brigade de recherche pendant une semaine et aurait été plusieurs fois frappé avec un câble sur le dos et les bras et avec une machette sur la plante des pieds. Lors de son interview (19 mai), son corps présentait encore des marques de coups de machettes et de matraques, en particulier sur les bras. On lui aurait aussi injecté du lait dans le sang lors de son arrestation. Il n'aurait à aucun moment accepté de reconnaître les faits dont on l'accusait. Présenté au procureur, il aurait nié les faits et l'affaire aurait été renvoyée à quinze jours plus tard. Il aurait ensuite été transféré à la prison de Kondengui, où, au moment de l'interview, il aurait passé déjà deux nuits dans la cellule dite de passage. N'en ayant pas les moyens financiers, il n'aurait pas reçu de soins médicaux pour ses blessures.

69. Paul Gwateze aurait été arrêté le 9 mai 1999 suite à une tentative d'évasion. Lors de sa capture, il aurait été traîné par terre par les gardiens de la prison de Kondengui et aurait été frappé à la tête avec des crosses de fusil et de gourdins, en présence et sur ordre du régisseur. Lors de son

interview (19 mai 1999), il présentait des marques semblant concorder avec son récit. Il aurait ensuite été placé en cellule disciplinaire pour une durée inconnue de lui.

70. Francis-Raoul Hossie se serait rendu le 11 mai 1999 au poste de police du port de Douala pour une affaire commerciale datant de 1993, sur convocation du commissaire-adjoint. Lorsque ce dernier aurait ordonné sa garde à vue, il en aurait demandé les raisons, ce à quoi le commissaire-adjoint aurait répondu : "On va vous montrer de quoi nous sommes capables - vous croyez que la démocratie vous a donné le droit de parler à un commissaire". Il aurait alors été frappé, puis déshabillé et laissé en slip assis dans le hall pendant toute la nuit. Le lendemain, grâce aux interventions de deux amis, l'un commandant dans l'armée de l'air, l'autre colonel, et après avoir versé une caution, il aurait été libéré. Sa carte d'identité aurait néanmoins été gardée au commissariat du port.

71. Prosper Biakolo aurait été arrêté sur la voie publique le 18 mai 1999 à Yaoundé. Il aurait été amené au poste de la police judiciaire (PJ) à Yaoundé où il aurait été frappé avec la crosse d'armes sur la tête et frappé avec des machettes sur les épaules, de manière à lui faire avouer qu'il avait participé à des vols. Il aurait perdu beaucoup de sang et ses parents présents au poste de police l'auraient emmené, sous la garde d'un policier, au dispensaire où il aurait reçu cinq points de suture à la tête. Il n'aurait pas été interrogé depuis. Au moment de l'interview (20 mai), il présentait des marques semblant concorder avec son récit.

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1. INTRODUCTION

1. Following a request by the Special Rapporteur, the Government of Romania invited him to visit the country within the framework of his mandate. The visit, which took place from 19 to 29 April 1999, enabled the Special Rapporteur to achieve his aim of collecting first-hand information from a wide range of contacts in order to better assess the situation with regard to the practice of torture and ill-treatment in Romania.

2. During his visit the Special Rapporteur held meetings in Bucharest from 19 to 22 April and on 29 April with the following authorities: the Minister of Justice, the Deputy Ombudsman, the General Prosecutor, the Chief Prosecutor, Military Prosecutor's Office, Supreme Court of Justice, the Secretary of State, Department for Child Protection, Secretary of State, Minister of the Interior, the First Deputy General Inspector of the Romanian Police, the President of the Human Rights Commission of the Senate, the President of the Human Rights Commission of the House of Deputies, the Director of the Institute of Legal Medicine, and the General Director, Department for Treaties and Consular Affairs, Ministry of Foreign Affairs.

3. The Special Rapporteur visited the following cities in Romania besides Bucharest: Craiova, Bacau and Iasi. In each of these cities the Special Rapporteur met with the County Police Chief Inspector and visited police lock-ups. In Bucharest the Special Rapporteur visited the Jilava penitentiary and the Jilava penitentiary hospital, as well as Police Station 19. In addition, he visited the Craiova penitentiary, which houses those prisoners who have received life sentences in Romania, and the Iasi penitentiary. Further, the Special Rapporteur made brief visits to police lock-ups in Urziceni municipality and Vashli.

4. The Special Rapporteur also met persons who themselves or whose relatives had allegedly been torture victims and he received verbal and/or written information from non-governmental organizations, including the following: the Association for the Protection of Human Rights - Helsinki Committee (APADOR-CH), the Romanian Group for the Defence of Human Rights, the Romanian Independent Society of Human Rights (SIRDO), the League for Human Rights Protection (LADO), the ICAR Foundation, and Rromani CRISS (Romani Centre for Romani Studies and Social Action).

5. The Special Rapporteur thanks the Government of Romania for allowing him to make this visit and for its valuable collaboration. The Special Rapporteur also wishes to thank UNDP-Bucharest for its assistance throughout the course of the mission.

A. The practice of torture: scope and context

6. During the course of the past few years, the Special Rapporteur has transmitted numerous allegations to the Government concerning ill-treatment and torture of detainees by the police (see, for example, E/CN.4/1999/61, paras. 597-613). It is alleged that police frequently use force to extract confessions or to punish criminal suspects.

7. Most government officials with whom the Special Rapporteur met during his mission to Romania emphasized that torture and ill-treatment is prohibited under the Constitution and the Criminal Code. For example, the Minister of Justice stated that torture is not a dangerous

phenomenon in Romania and that, when committed, it is malpractice by a civil servant that can be criminally sanctioned. He stressed that cases of torture and ill-treatment are isolated and are never committed for political reasons, in contrast to the communist era.

8 However, the President of the Commission on Human Rights of the Senate informed the Special Rapporteur that her Commission has knowledge of many cases of torture or ill-treatment committed by the police. She noted that ill-treatment primarily takes place in police lock-ups, although there are also cases of abuse reported from the penitentiaries. Her harshest criticism was directed toward the authorities who, according to her, are rarely able to provide any answers or solutions when complaints are filed. She was particularly critical of the judiciary, stating that it is almost impossible to solve these cases when the judicial system is involved. In her view, judges in Romania consider themselves a privileged social class who believe that their independence means that they answer only to the law and not to anyone else. She also lamented the fact that there is little sympathy among the general public for criminal suspects or prisoners because of the high crime rate in Romania.

9 The high crime rate that currently prevails has also created extremely difficult conditions for the police. The Procurator General acknowledged that there are some problems, but felt that the human factor should be appreciated because of the conditions in which police must work. He noted that most of the cases of abuse involve non-commissioned officers who are poorly paid. He further noted that, while the police force is undergoing changes, many policemen were trained under the prior, communist regime when the State was more likely to resort to repression. Nevertheless, he maintained that tremendous improvements have been made and that cases of abuse by the police are rare and isolated.

10 Representatives of non-governmental organizations with whom the Special Rapporteur met painted a different picture. According to these NGO representatives, torture and ill-treatment during the early phases of arrest are common in all regions of the country. The abuse normally takes the form of severe beatings, although there are cases where suspects are hung suspended from a locker or other fixture, cigarette burns are also reported frequently. In the vast majority of the cases, the beatings are used to extract a confession from the suspect. Some of the NGO representatives also alleged that Roma suspects are particularly at risk of torture or ill-treatment.

11 As noted above, it is alleged that the early phases of detention are the period in which a criminal suspect is most at risk of being subjected to torture or ill-treatment. Under the Romanian Constitution, a suspect may be held for 24 hours in the absence of an arrest warrant. During this 24-hour period, the police may hold a suspect in the police lock-up under a police custody warrant; in these cases, the suspect must be registered in the lock-up records. However, the Law on Police No. 26/1994 provides that persons who refuse to identify themselves, or whose identity cannot be established, may be "led" to the police station for the purposes of identification; this period cannot last longer than 24 hours. Non-governmental organizations argue that this provision violates the Constitution by allowing a 24-plus-24-hour period. Police officials whom the Special Rapporteur met stated that in practice the process of identification takes at most a few hours and they denied that they hold individuals for up to 48 hours without an arrest warrant being issued. The Secretary of State of the Ministry of the Interior noted that

this is not a penal measure, but rather an administrative measure for the purposes of identification, but he acknowledged that the law does allow for a person to be held for a 24-hour period for the purposes of identification

12 Of particular concern to the Special Rapporteur is the fact that the law regulating the conditions of pre-trial detention, Order 0410, which dates from 1974, remains classified. The Minister of State of the Ministry of the Interior informed the Special Rapporteur that a draft law has been presented to Parliament which would be available to the public. In the meantime, the current law, which is secret, remains in effect.

13 Several government interlocutors expressed the view that the pre-trial detention centres should be placed under the authority of the Ministry of Justice, rather than the Ministry of the Interior. Both the Secretary of State of the Ministry of the Interior and the Deputy General Inspector of Police expressed the view that the police should not control pre-trial detention, but both noted that the legislative reforms required to make such a change would be a slow process. The Military Prosecutor was also of this view. In the absence of such change, there are internal techniques to prevent the ill-treatment of detainees. In particular, several interlocutors mentioned the fact that civilian prosecutors may inspect the police lock-ups or prisons at any time. Similarly, the General Inspectorate of Police carries out spot-checks of police lock-ups. However, the Prosecutor General admitted to the Special Rapporteur that the heavy caseloads of the civilian prosecutors has made it more and more difficult to carry out such inspections. The Military Prosecutor also suggested that the problem would "disappear" if the civilian prosecutors were more involved with the supervision of the police. To this end, he noted that the civilian prosecutors should inspect more often and should make spot-checks. The Military Prosecutor also recommended that no suspect should be held without prior authorization from the prosecutor, even for the first 24 hours of detention. Further, defence counsel should be allowed to be present during those first 24 hours.

14 With respect to access to counsel, Romanian law provides that a lawyer must be present throughout the criminal procedures. However, as the Secretary of State of the Ministry of the Interior noted, the criminal procedure does not formally begin until an arrest warrant has been issued by the prosecutor, and therefore, an individual does not have access to a lawyer while being held under a police custody warrant. Police officials invariably informed the Special Rapporteur that a suspect has the right to an attorney at any point and is informed of this right by the police, but most of the detained persons with whom the Special Rapporteur met informed him that they were rarely informed of this right. Indeed, in most cases, an ex officio lawyer was appointed and was only present when the suspect was brought before the prosecutor to make a statement. In several cases, the suspects were not even aware at the time that a lawyer was present, because the ex officio lawyers did not provide any legal advice or guidance.

15 During the course of his mission, the Special Rapporteur received several testimonies from individuals who claimed to be victims of police abuse. The testimonies were taken from detainees, in both police lock-ups and prisons, and from individuals who had been released from custody. The Special Rapporteur does not take a position on the veracity of any one allegation, but does note that there is a consistency in the allegations that leads him to believe that ill-treatment does in fact occur. The testimonies may be summarized as follows:

16. Miron Constantin, held in Jilava penitentiary, outside Bucharest, at the time of the visit, was arrested on 29 September 1995 by the Bucharest police, allegedly without charge. He was initially held in the Bucharest Police Headquarters, where he claims to have been subjected to beatings with wooden sticks by four police officers. The officers were demanding that he confess to a murder, which he refused to do. He claims to have suffered a broken collarbone, three broken ribs, a broken nose and a broken finger on his right hand as a result of the beatings. After going on hunger strike to protest the beatings, he finally confessed to the murder when the officers allegedly threatened to harm his daughter. Despite the fact that he subsequently retracted the confession in court, he was found guilty of murder on 18 February 1999. He had filed a complaint with the non-governmental organization SIRDO, but to his knowledge no investigation was ever made into his allegation of abuse by the police officers.

17. Danut Iordache, also held in Jilava at the time of the visit, was reportedly arrested at his home in Bucharest on 3 February 1997 towards 6 a.m. He was allegedly taken by the police to the Section 14 police station and then released on 5 February. He was admitted the same day to the emergency service of the hospital for a broken jaw and bruising on the chest caused by beatings allegedly administered by police officers. This case is reflected in the Special Rapporteur's report to the Commission on Human Rights at its fifty-fifth session (E/CN.4/1999/61, para. 604). During the interview, he informed the Special Rapporteur that he was due to be sentenced on 27 April 1999, although he hoped to be released since there was no evidence against him and the "gang" responsible for the crime had stated that he was not involved in the thefts. He had lodged a complaint with the Military Prosecutor against the police officer; this was confirmed by the Government.

18. Gabriel Marian Badila, held in Craiova penitentiary at the time of the visit, was arrested on 6 March 1996 in the village of Lilieste in Prahova county on charges of murder and arson. He was initially taken to the police station in Breaza where he was held in the police lock-up for 24 hours. He claims to have been chained to a wall and subjected to kicks and beatings with a baton for several hours to force him to confess to the crime. He also alleges that he was beaten in the presence of the prosecutor when he retracted the confession and that the prosecutor herself slapped him twice when he requested a medical examination. He further claims that he requested and was denied access to an attorney during this interrogation. He ultimately confessed to the crime of arson when his family was threatened, but then denied the confession when he appeared before the court. He claims that there is no evidence against him beyond the confession and a necklace of the victim, which he claims had been given to him as a gift. At no point was he given a medical examination, with the exception of a psychiatric examination when he was transferred to Jilava penitentiary. He was subsequently found guilty of the crime of arson and is now awaiting the appeal. Although he has no lawyer, he has sent three applications to the Military Prosecutor complaining of the police abuse, but has received no response. He has now contacted SIRDO for assistance.

19. Constantin Marian, held in Craiova penitentiary at the time of the visit, was reportedly arrested in 1998 and detained at the Tirgu Jiu police station, where two investigating officers allegedly threatened that a distinctive mark would be put on his file in order for the judge to issue the suspect the longest sentence possible. He was nevertheless not ill-treated. He did inform the Special Rapporteur, however, that the conditions of detention in Tirgu Jiu are very

poor, with the inmates handcuffed or chained when held in isolation cells. He also claimed that torture was commonly practised in prison, although he himself had never been a victim.

20 Valimareanu Eugen, also held in Craiova penitentiary at the time of the visit, was reportedly involved in a fight along with his brother in a bar in his village of Vulja, in which two persons died. He claims to have reported to the police station in Timisoara on 21 May 1998 and then to have been transferred back to Vulja in order to be interrogated. There he was allegedly beaten several times in order to make him confess that he had participated in the killing of the two aforementioned persons. He claims to have been rolled in a carpet and beaten with a wooden stick, the so-called *rotissoire*, two or three times a week for more than two hours until he became unconscious. He informed the Special Rapporteur that these beatings only stopped when he signed a statement admitting to the facts. He claims that no lawyer was present at the time he signed the statement. He was then transferred back to Timisoara. He alleges that his brother was subjected to the same treatment and, after three months of detention in police custody, made a statement implicating him, in response to promises that doing so would reduce his own sentence. Both were subsequently sentenced to life imprisonment. Their appeals were rejected by the Pitesti Appeals Court and they are currently awaiting an appeal to the Supreme Court. At the time of the visit, both brothers were on hunger strike to protest the sentences.

21 Petrica Ailenei, who was being held at the Iasi penitentiary at the time of the visit, was arrested on 6 February 1999 in Iasi following a quarrel in a bar. He was allegedly beaten on the street and then taken back to the bar, where he was again beaten, punched and kicked on the upper part of his body, his legs and head by gendarmes and police officers, as well as the bartender. He was then taken to the municipal police station, where he refused to make a statement. In the basement of the police station, he was allegedly subjected to further beatings. At 10 p.m. he was transferred to the county police lock-up, but the officer-in-charge refused to detain him because he was covered in blood. He was thereafter taken to the hospital, where he received stitches on his temple. He reported that he also suffered a broken nose but, despite his complaints, the doctor did not examine the bruises on his legs and upper body. He also claims that the police refused to allow him to remain at the hospital, contrary to the doctor's advice. He informed the Special Rapporteur that he was given no medical certificate following this hospital visit. On 9 February 1999, he was brought before a public prosecutor, who informed him that he had been charged with breach of public order. In the presence of an ex officio lawyer he signed a statement containing his version of the facts. He alleges that another statement was presented in court admitting to rape and theft. One week later, at his request, he was examined by the Forensic Institute, but he had not seen the report produced. On 30 March, the prosecutor refused to release him on bail, but on 5 April the arrest warrant was not prolonged. He informed the Special Rapporteur that SIRD0 had filed a complaint on his behalf to the Military Prosecutor concerning the beatings by the police and gendarmes.

22 Florin Macovei, also interviewed at the Iasi penitentiary, was reportedly arrested with an accomplice on 20 June 1998 at the railway station in Bucharest for an alleged theft in the Federal Republic of Yugoslavia. Both were reportedly taken to the General Directorate for the Railways in Bucharest, where they were allegedly detained and beaten for a day and a half without an arrest warrant. He claims that they were beaten over a period of eight days in order to extract a confession. According to Florin Macovei, he was handcuffed to a cell door and beaten with fists and truncheons, and he was put on the floor face down with a piece of wood on his back on

which an officer would repeatedly jump. The officers also threatened to kill him and he could hear his friend being ill-treated as well. He nevertheless refused to make any statement while in police custody. On the third day of detention they were informed that they were under an arrest warrant and on the eighth day they were taken to the prosecutor, at Macovei's request. During the transportation to the prosecutor's office, the police threatened to continue the beatings if they did not confess or if they complained about the beatings. At the prosecutor's office Macovei made a statement recognizing the facts, that is, that he was present when his friend stole some items from the complainant, for whom they had been working and who had refused to pay them. An ex officio lawyer was present at the prosecutor's office, but the lawyer did not consult with Florin Macovei. Two investigating officers were also present. He claims that the prosecutor obviously knew that he had been beaten, but nevertheless accepted the statement. He was then taken back to the basement of the railway police premises and held for a further 24 hours without being subjected to further ill-treatment, then transferred to Iasi. He informed the Special Rapporteur that he had filed a complaint with the military prosecutor's office in Bucharest in August 1998, and then to the military prosecutor's office in Iasi. Neither has replied to his complaint.

23. Viorel Baci, also interviewed at Iasi penitentiary, was detained on 19 September 1996 on charges of stealing grain from public grounds. He was immediately taken to the county police station in Suceava and then to the prosecutor's office. He claims that he was implicated in the crime by another suspect, who had been tortured and promised a lighter sentence if he provided the names of his accomplices. Viorel Baci, however, alleged that the real motivation for his arrest was the fact that the date of 20 September had been set for the court hearing of his complaint against police officers who he claims had beaten him during a prior arrest in 1988. He was eventually found innocent of the charges in this earlier case. When he was arrested in 1996, the police taunted him by telling him that he would miss his court hearing. When he was taken to the prosecutor, he demanded to be confronted with his accuser, the prosecutor refused. Viorel Baci therefore refused to make a statement. He claims that he could prove that he could not possibly have committed the alleged crime because he was able to provide records that showed he was at the dentist at the time of the crime. He further claims that the defendant who implicated him had admitted that he had given Viorel Baci's name under torture and that two others were in fact involved in the crime. He alleges that an arrest warrant for 30 days was issued and after the 30 days he was transferred to the Iasi penitentiary without a court order. He claims that it was more than a year before the court issued the order and, therefore, his detention was illegal. He also alleged that he had been threatened by prison officials not to complain about his treatment.

24. As mentioned above, the Special Rapporteur visited police lock-ups in Bucharest, Craiova, Bacau, Iasi, Urziceni municipality and Vaslui. In each of these lock-ups the Special Rapporteur visited detention cells and spoke with detainees. In the vast majority of the cases, the detainees had confessed to the crime because their guilt was obvious. Virtually none of the detainees complained of ill-treatment on the part of the police. The Special Rapporteur recognizes that those still in detention at police lock-ups, where abuse is reported to take place most frequently, may fear reprisals and, therefore, be hesitant to report abuse. Nevertheless, there were no outward signs of abuse, for example bruises or cuts, and as most detainees readily conceded their guilt, coercion was not necessary. One exception involved a detainee who wished to remain anonymous. This individual was reportedly rearrested on 26 April 1999 for

thefts allegedly committed in the past, for which he had been arrested on a previous occasion. He was initially taken to his home village police station where he was given "a lesson" by being beaten on the back by three police officers with rubber truncheons and punched on his eye. The bruises allegedly resulting from this assault were still visible at the time the Special Rapporteur met this individual. He stated that he was not forced to make a statement, but merely asked to confess to thefts he had committed. In the evening of the same day he was taken to a police station in the countryside. This type of treatment is said to be commonplace in countryside police stations.

B. Prison conditions

25 All the government officials with whom the Special Rapporteur spoke acknowledged the unacceptable conditions found throughout the penitentiary system. The primary problem is the extreme overcrowding that exists in all prisons and which has created conditions which may be described as inhumane. Jilava penitentiary was built to house 1,385 inmates, but there were 3,151 inmates present when the Special Rapporteur visited, with only 2,564 beds available for the prisoners. The governor of the penitentiary informed the Special Rapporteur that the prison normally has an average of over 3,200 inmates. It was reported to the Special Rapporteur that at Craiova penitentiary, with capacity for 1,450, there were 2,415 detainees, sharing 2,060 beds. The governor of the Iasi penitentiary informed the Special Rapporteur that its official capacity was 1,250, but the actual population at the time of the visit was 2,223, with 1,891 beds available for the prisoners. In general, the most severe overcrowding involves males over the age of 21. In cells that the Special Rapporteur saw in Craiova, the bunks were stacked three or four high, reaching to the ceiling, yet there were still not enough beds for the number of persons per cell, requiring the inmates to sleep in shifts.

26 According to the President of the Human Rights Commission of the Senate, the "dramatic state of prisons" is not determined by an exaggerated crime rate, as many claim, but rather, by an exaggerated incarceration rate. The Minister of Justice also indicated to the Special Rapporteur that overcrowding could be reduced by changing sentencing to allow for bail. In this regard, he pointed out that both the Senate and the Chamber of Deputies had passed a law to have misdemeanours punished by community service. Statistics provided by the governor of Jilava penitentiary indicate the nature of the problem. According to his records, of the 3,253 persons detained at the penitentiary, 1,104 were first-time offenders, most of them charged with theft. Between 1995 and 1998, national statistics indicate that over 50 per cent of detainees were being held for the crime of theft. This is consistent with what the Special Rapporteur found to be the situation in police lock-ups. For example, in Police Station 19, the Special Rapporteur spoke to a 15-year-old boy who had been held for three months in the police lock-up for having stolen a packet of cigarettes from a store, another 18-year-old boy had stolen 400,000 lei (equivalent to a few United States dollars) from a car. The Special Rapporteur also spoke to individuals who had been detained because they were unable to pay fines; it was reported to the Special Rapporteur that, in some cases, for amounts as small as 400,000 lei individuals had been sentenced to serve 40 days in prison.

27 With the exception of Rahova penitentiary, just outside Bucharest, which was built recently, the facilities in most prisons are extremely old and decrepit. Craiova penitentiary, for

example, is over 100 years old. In all prisons the Special Rapporteur visited, the plumbing and electricity were primitive and badly in need of repair. In general, there was minimal natural light in the cells and the artificial light was dim, creating a dark and depressing atmosphere. The Secretary of State of the Ministry of the Interior informed the Special Rapporteur that 60 per cent of the detention centres in the country (114 out of 170) had been closed because they did not meet minimum standards. He also indicated that the amount of 5 billion lei was required to improve the hygienic conditions of the detention centres, but the Government simply did not have the funds. He said that that figure did not take into consideration the need for reconstruction.

28 The physical state of police lock-ups is also very poor. Although the problem of overcrowding is not as acute in the lock-ups, the cells are dark, dank and dingy. In most cases, the cells are located in the basement of the police station and have only a small window that provides minimal natural lighting. The heating is poor and the cells are extremely cold during the winter months. These conditions are exacerbated by the fact that the detainees are allowed only one hour a day outside of the cells for exercise. In poor weather, the detainees may choose not to go outside because the exercise yard is frequently open to the elements.

29 There are some reports of ill-treatment on the part of the staff of the penitentiaries, but it does not appear to be routine. However, some inmates did complain that they are intentionally placed in cells with violent inmates. The Minister of State of the Ministry of the Interior conceded that there is some criticism of the use of room leaders, that is, detainees selected by the prison warders to monitor anti-social behaviour and to protect against self-mutilation, which has become a serious problem in the prison system. He defended the use of room leaders as necessary because the prison staff is insufficient to monitor such a large prison population and there are not the financial means for other surveillance systems. This position was supported by the governor of Jilava penitentiary, who said that the ratio staff-inmates was 1 to 10. Based upon his visits, the Special Rapporteur does not believe that violence among the inmates is encouraged or tolerated by the prison officials.

30 The Special Rapporteur was appalled at the condition of two inmates he found in an isolation cell at the Jilava penitentiary. Both individuals had committed acts of self-mutilation and, as a result, had been placed in the isolation cells. On this visit, the Special Rapporteur was accompanied by a medical doctor from the ICAR Foundation, a torture rehabilitation centre based in Bucharest. The doctor was able to confirm what should have been obvious to even a layman, namely, that the wounds of each man were severely infected and that they were urgently in need of medical care. In one case, the governor explained that the inmate had driven a nail into his forehead to avoid going to court. He refused to have the nail removed and was then taken to a civilian hospital to have the nail removed. When he was returned to Jilava, the prison doctor certified that he could be placed in the isolation cell. The second inmate had swallowed metal items and also refused medical treatment. The governor explained that he had asked to be moved to the prison infirmary, but the prison doctor had refused. The inmate had then cut himself across the abdomen. In each case, the governor showed the Special Rapporteur the report signed by the prison doctor certifying each inmate to be fit for solitary confinement. The Special Rapporteur insisted that both men should urgently receive medical, including psychiatric, care, indicating that no matter how unreasonable it might seem,

individuals in that physical state could not be left in solitary confinement to die from their wounds. The governor informed the Special Rapporteur that both men would immediately be removed from the isolation cells and transferred to the infirmary.

31. The Special Rapporteur had received reports that the prison hospitals were a serious problem which required urgent attention. However, the Special Rapporteur made a brief tour of the Ilieva prison hospital, one of five hospitals in the penitentiary system, and vast improvements appeared to have been made. The medical doctor accompanying the Special Rapporteur expressed the view that the conditions at the hospital were acceptable and comparable to civilian hospitals in Romania. The inmates in the hospital also expressed satisfaction with the care that they were receiving. The doctor explained that at times there had been a shortage of drugs, but that was currently not a problem.

II. THE PROTECTION OF DETAINEES AGAINST TORTURE LEGAL ISSUES

32. The Romanian Constitution prohibits torture and inhuman or degrading punishment or treatment. Similarly, article 267 (1) of the Criminal Code provides:

*"Pain or strong physical or psychic suffering intentionally caused to a person, especially in order to obtain from this person or from a third person information or confessions, to punish him for an act that he or a third person committed or is suspected to have committed, to intimidate or to exert pressure on him or on a third person, or for any reason based on a form of discrimination of whatever nature, when such pain or suffering is caused by the agent of a public authority or by any other person who acts under an official title, instigated by or with the express or tacit consent of such persons, is punished by from two to seven years' imprisonment."*¹

Where such acts result in the death of the victim, the perpetrator is punished by imprisonment for life or for from 15 to 25 years.

33. Article 68 of the Code of Criminal Procedure provides that "it is forbidden to use violence, threats, or any other constraints, as well as promises or encouragement, for the purpose of obtaining evidence". All the Special Rapporteur's interlocutors, including police officers, emphasized that evidence obtained by torture or ill-treatment is inadmissible in a court of law. Further, article 69 provides that "any statements given by the defendant may lead to the truth only to the extent that they are corroborated by facts and circumstances resulting from all the evidence resulting from the case". Similarly, article 27 of the Law on Police (Law 26/1994) prohibits the causing of physical or psychological pain to persons under investigation.

34. The investigation of police abuse is under the jurisdiction of military prosecutors. This system was widely criticized by non-governmental organizations and lawyers because there is a

¹ Based on an English translation of the Criminal Code provided by the Ministry of Justice.

perception that the military prosecutors are not independent of the police. However, the Procurator General noted that an advantage of this system is the fact that there are few links between the police and the military prosecutors, in contrast to civilian prosecutors who work with the police on a day-to-day basis. On the other hand, the Chief Prosecutor of the Military Prosecutor's Office at the Supreme Court of Justice conceded that in cases involving civilians the military prosecutors must rely extensively upon the police to carry out investigations because they do not have an intermediary body to assist them. He also noted that there are only 80 military prosecutors in the entire country, each of whom on average works on over 100 active files.

35. The Special Rapporteur received numerous reports concerning the inadequate investigation of allegations of police abuse. The case of Gabriel Carabulea, which the Special Rapporteur referred to in his report to the Commission on Human Rights at its fifty-fifth session (E/CN.4/1999/61, para. 599), was provided by lawyers as a clear example of the inadequacies of the present system. Gabriel Carabulea was arrested by three police officers on 13 April 1996 in Bucharest following a car crash in which he was involved. At the time of his arrest, the police report made no reference to any injury which Carabulea might have suffered in the car accident, and the driver of the other car involved in the accident testified that Carabulea had jumped from his car following the accident and had run from the scene. In a report submitted on 8 May 1996, the captain who conducted the interrogation at the police station stated that there were no signs of violence on Carabulea's body. Similarly, the chief of the lock-up, also stated in his report that there were no signs of violence on his body. On 16 April 1996, while still in police custody, Carabulea was taken to the infirmary of the Bucharest police station and examined by a medical assistant. Later that day, he was taken to the hospital of the Ministry of the Interior where he had a lung X-ray, which was negative. At 6:40 p.m. that day, he was taken to the Bucharest prison hospital at Jilava where he was admitted in critical condition. He was immediately transferred to a civilian hospital where he was diagnosed as having pulmonary thrombo-embolism (blood clots in the lung), paroxysmal tachycardia (profound cardiac insufficiency of the right heart chamber) and a pericardiac haematoma. On 3 May 1996, Carabulea died. The medical report issued states that he died of pulmonary thrombo-embolism, severe pulmonary hypertension and thoracic and abdominal traumatism due to the car accident of 16 April 1996.

36. During a visit to the hospital by his wife, Carabulea is reported to have told her that he had been brutally beaten by the police - specifically, hung from a locker and beaten while hanging, and, when he refused to confess to the robbery, rolled in a carpet and beaten with sticks. When his family viewed his body in the hospital on 3 May 1996, they observed large bruises around his abdomen and on his face, legs and genitalia. They were denied permission to remove the corpse and an autopsy was performed by the Forensic Institute. The military prosecutor issued an on-site report on 3 May stating that the patient had died from pulmonary thrombo-embolism and that a member of the medical staff had been told by the victim that the injuries were the result of a car accident in which he was involved on 13 April in which the steering wheel had hurt his thorax. The report also states that the doctor had seen no external signs of violence and no symptoms of any internal lesions.

37. Lawyers for the family of the victim allege that the military prosecutor made no attempt to contact the family. Nor were any of the family members or doctors questioned in the ensuing investigation. The military prosecutor also ordered the autopsy by the Forensic Institute. The

family members were not notified of the autopsy and no representative of the victim was present. The autopsy concluded that the immediate cause of death was acute cardio-respiratory insufficiency and that the determinate cause of death was "broncho-pneumonia".

38 On 8 May 1996, the wife of the victim filed a complaint with the military prosecutor's office in Bucharest, claiming that her husband had died following the administration of beatings by the police officers. Attached to the complaint was a medical certificate issued in May 1995 by the Clinical Physiology Institute certifying that Gabriel Carabulea was in good pulmonary pleural condition. The complaint also noted that the doctor in charge of the victim had found severe internal injuries which could not have been produced other than through beatings. The family also provided photographs taken following the victim's death that show bruises on his body.

39 Following an investigation by the military prosecutor's office, a decision of non-indictment was issued on 20 August 1996. In support of his conclusion, the military prosecutor referred to the conclusions of the forensic doctor and the police officers' denial that they had engaged in any physical violence. Following complaints from non-governmental organizations, on 12 February 1997, the Military Section of the General Prosecutor's Office issued a resolution overturning the 20 August decision, ordering a new investigation and specifying various issues that should be addressed in the new investigation. However, it is alleged by the lawyers for the victim that numerous issues relevant to the inquiry into alleged police ill-treatment were never addressed in the subsequent investigation despite the specificity of the instructions contained in the 12 February resolution. Moreover, the medical forensic expert examination, which was supposed to be carried out by experts of the Bucharest Forensic Medical Institute, was carried out by the same forensic doctor who had conducted the initial autopsy, who confirmed his initial findings. On 4 March 1998, another non-indictment decision was issued.

40 The Special Rapporteur notes that a decision to issue an indictment of prosecution for police abuse is at the sole discretion of the military prosecutor. In accordance with articles 275 to 278 of the Code of Criminal Procedure, complaints against a prosecutor's decision can only be filed hierarchically within the General Prosecutor's Office. There is no judicial review or oversight by any other body.

41 Pursuant to Law No. 54/1993, only active military officers may be appointed to serve as military prosecutors. Selection and training are undertaken by both the Ministry of Justice and the Ministry of Defence, but they are accountable for violations of military disciplinary rules. Also, the military prosecutors' salaries are paid by the Ministry of Defence and, in fact, are higher than those paid to civilian judges and prosecutors since they receive military allowances. Further, as active officers, they are subject to promotion or demotion by the Ministry of Defence.

42 With respect to the case of Gabriel Carabulea, the military prosecutor informed the Special Rapporteur that he had found no reason to reopen the case. However, he was prepared to review the facts once again. The Special Rapporteur notes that lawyers for the victim have filed a complaint before the European Court of Human Rights alleging violations of articles 2, 3, 6, 13 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. While the Special Rapporteur is not in a position to reach a conclusion on the merits

of this case, it raises serious concerns about the effectiveness of the investigation of torture on the part of police officials and is consistent with other reports that the Special Rapporteur has received.

43 The Special Rapporteur requested, but did not receive statistics on the number of complaints filed and prosecutions brought under articles 266 (Abusive behaviour), 267 (Abusive investigation) and 267 (1) (Torture) of the Criminal Code. The military prosecutor cited one case in which a policeman in Constanza had been sentenced to five years in prison and another case in which a policeman had been sentenced to 15 years' imprisonment for torture. It was a matter of concern to the Special Rapporteur that the Prosecutor General did not keep statistics on the number of cases withdrawn by civil prosecutors on the grounds that evidence had been obtained by illegal means, and that he was not able to provide statistics on the number of cases referred by civilian prosecutors to the military prosecutors. In this regard, the Procurator General indicated that if a suspect complains to a prosecutor that he has been subjected to violence in order to coerce a confession, the prosecutor may not use that statement, but he may take another statement. On questioning from the Special Rapporteur, the Procurator General conceded that a suspect may not feel secure in making a retraction when he knows he will be returned to police custody following his interrogation by the prosecutor. To this end, the Procurator General recommended that detention centres should be under the Ministry of Justice and not the Ministry of the Interior.

44 The Minister of Justice informed the Special Rapporteur that the Government has proposed legislation that would reduce the jurisdiction of the military prosecutors, transferring most crimes currently under the jurisdiction of the military courts to the civilian courts. Under this proposed legislation, only the crime of treason and crimes of war would fall under the jurisdiction of the military courts. The Minister indicated that the Parliament would probably consider this reform in the spring of 1999.

45 The Minister of Justice also informed the Special Rapporteur that he has the power to ask the Prosecutor General to initiate a criminal or administrative case against a prosecutor who is ignoring evidence of torture. However, to date he had not used this power, preferring to inform the Prosecutor General and then allowing him to proceed as he sees fit.

A. Forensic Institute

46 The Special Rapporteur also received numerous reports alleging that medical certificates are frequently falsified to cover-up ill-treatment by the police. Professor Vladimir Belis of the Institute of Legal Medicine informed the Special Rapporteur that very few cases of police ill-treatment are in fact submitted to the Forensic Institute, but only a medical certificate issued by a forensic doctor is admissible in court. A medical certificate obtained from a private physician or a civil hospital should, however, be taken into account by the forensic doctor when he issues his or her own certificate. In the light of the allegations that the police interfere in the issuance of medical certificates, the Special Rapporteur was particularly concerned to learn that the police may request a new certificate to be issued by a higher-ranking forensic doctor if they are not satisfied with the initial forensic certificate issued. Professor Belis explained that, conversely, the alleged victim may also request the Forensic Institute to issue a new certificate, but must pay the cost of 8,500 lei.

B. Ombudsman

47 In March 1997, the Parliament adopted Law No. 35 on the Organization and Functioning of the Advocate of the People Institution (The Ombudsman Act). The Office of the Ombudsman was established in May 1997 and the staff appointed in December 1997. The office currently has a staff of 70, of whom 50 are lawyers. The Ombudsman has the power, *inter alia*, "to take up and distribute complaints filed by persons who have been aggrieved by public administration authorities through violations of their civic rights and freedoms, and to decide on such complaints". He or she may take up cases on his or her own initiative or on the basis of complaints lodged by persons, as provided for under the law. However, the Deputy Ombudsman informed the Special Rapporteur that the Office is forbidden to investigate judicial issues and, therefore, it may not review a decision of a court or prosecutors. Nevertheless, she indicated that the Office may bring a case to the attention of the Prosecutor General if this is deemed necessary.

48 The Special Rapporteur was informed that only a small percentage of the cases that the Office of the Ombudsman handles involve allegations of police abuse; the majority of cases concern the restitution of private property. One problem that the Office has faced is a lack of cooperation from the public authorities, despite the fact that the above-mentioned law requires that "public authorities must communicate or, as the case may be, make available to the Advocate of the People, under the terms of the law, any information, documents or papers they have in their possession as may be linked with the complaints lodged with the Advocate of the People, while giving him support for the exercise of his powers". The Office of the Ombudsman has no authority to sanction a public authority that fails to cooperate. Further, any decision taken by the Ombudsman is a non-binding recommendation.

III. CONCLUSIONS AND RECOMMENDATIONS

49 The Special Rapporteur wishes to express his appreciation to the Government of Romania and the Ministers and public officials he met for their cooperation in facilitating his visit and providing him with information. All his interlocutors were open and candid with the Special Rapporteur and he was impressed with the genuine interest shown by all of them in meeting international human rights standards and improving the conditions of those deprived of their liberty. He also appreciates the cooperation of the various non-governmental organizations, many of whom carry out their work under difficult conditions.

50 Tremendous progress has been made in the area of human rights in the 10 years since the communist regime was overthrown. Freedom of association and popular participation in the political process are now accepted features of Romanian life. The assertion by the Minister of Justice that there are no political prisoners in Romania today appears to be correct. Nevertheless, as is also the case in many of its neighbours in Central and Eastern Europe, political and economic liberalization has also brought about political and economic instability in Romania. Moreover, a notable crime wave has led to a lack of sympathy for criminal suspects among a large sector of Romanian society.

51 As to the incidence of torture and ill-treatment, the Special Rapporteur is of the view, based upon his observations during the visits and discussions he held in Romania, that torture and ill-treatment are not routine in the country. Nevertheless, as acknowledged by most of his government interlocutors, there are persistent, albeit sporadic, cases of police abuse. These interlocutors also noted that the problem mainly concerns non-commissioned officers, who receive little training. This view would seem to be corroborated by the fact that there appears to be a more serious problem in rural communities, where the police have less training. There is, however, some evidence that would support the view of many non-governmental organizations that the Roma are more likely to be the victim of police abuse than others.

52 With respect to legal safeguards to protect against torture or ill-treatment, the legal provisions are consistent with international standards. In particular, the law forbidding the detention of anyone for more than 24 hours without an arrest order from a prosecutor appears to be respected in practice. Nevertheless, the reported cases of police abuse primarily take place during this period, requiring greater vigilance on the part of the authorities to monitor detention in police lock-ups and any abuse of the extra 24-hour period for identification.

53 The Special Rapporteur is concerned that the system of investigation in which the military prosecutors have the exclusive authority to investigate and prosecute is ineffective. At a minimum, there is a perception that the military prosecutors lack independence and impartiality. While there have been a few cases in which police officers have been prosecuted and sentenced, in most cases the investigations result in decisions not to prosecute. It is also of concern that the military prosecutors are assisted by the police in these investigations.

54 The Special Rapporteur is also concerned that there is inadequate legal defence for indigent detainees. As noted above, most detainees with whom the Special Rapporteur met reported that they received little or no legal advice or guidance from ex-officio lawyers. The Special Rapporteur is likewise concerned that suspects are rarely informed of their right to a lawyer.

55 With respect to prison conditions, there is an urgent need to address the gross overcrowding that exists in the prison system. The Special Rapporteur considers that no State has the right to subject persons to these conditions, regardless of the constraints on its resources, the rigidities of its legal system or the time required to develop new facilities. The Special Rapporteur is in agreement with the President of the Senate Commission on Human Rights that the problem is not an exaggerated crime rate, but an exaggerated incarceration rate. First-time petty offenders simply do not need to be incarcerated, particularly in the light of the prison overcrowding.

56 The Special Rapporteur views the establishment of the Office of the Ombudsman as a positive development, but notes that it does not receive the cooperation from other government agencies that it requires to operate effectively. The Office also requires sufficient financial and human resources to carry out effective investigations. Further, the fact that the Office has received relatively few complaints concerning police abuse demonstrates that more information must be disseminated about the Ombudsman so that the general public has greater awareness of the role the Office can play in the investigation of abuse by government agents.

57 In the light of the above conclusions, the Special Rapporteur has formulated the following recommendations, many of which were urged on him by government interlocutors. Some of these recommendations have reportedly been presented to Parliament in draft legislation. The recommendations are:

- (a) As a matter of immediate priority, action should be taken to remove from confinement in detention centres on remand all persons detained in excess of the officially proclaimed capacity of existing institutions. This recommendation could probably be substantially achieved by ordering the release pending trial of all non-violent first-time offenders.
- (b) Much greater use should be made of existing provisions in the law for the release of suspects on bail, especially suspected first-time, non-violent offenders. Instructions or guidelines to this effect should be given by the Minister of the Interior to investigators from his Ministry, and by the Minister of Justice to all prosecutors and judges.
- (c) The 1974 order regulating conditions of detention in police lock-ups should be immediately repealed and replaced with legislation that is available to the public.
- (d) Prosecutors should regularly carry out inspections, including unannounced visits, of all places of detention. In this regard, a protocol should be established to provide guidelines on the measures to be taken during such visits. Written reports should be submitted for each visit. Similarly, the General Police Inspectorate should establish effective procedures for internal monitoring of the behaviour and disciplining of their agents, in particular with a view to eliminating practices of torture and ill-treatment. In addition, non-governmental organizations and other parts of civil society should be allowed to visit prisons.
- (e) Legislation should be amended to place pre-trial detention centres under the authority of the Ministry of Justice.
- (f) Video and audio taping of proceedings in police interrogation rooms should be considered.
- (g) Legislation should be amended to transfer the power to investigate claims of police abuse and torture from military to civilian prosecutors. The investigation of allegations should be conducted by the prosecutor himself or herself and the necessary staff should be provided for this purpose.
- (h) In the interim, civilian prosecutors should refer all allegations of police abuse to the military prosecutor in an expeditious manner; military prosecutors should diligently investigate all allegations of police abuse made by detainees.
- (i) Prosecutors and the judiciary should speed up the trials and appeals of public officials indicted for torture or ill-treatment; sentences should be commensurate with the gravity of the crime.

(j) Civilian prosecutors should disregard any evidence obtained by illegal means and judges should be diligent in ensuring that all incriminating evidence obtained by such means is identified and excluded from the trial

(k) Any public official indicted for abuse or torture should be suspended from duty pending trial

(l) Priority should be given to enhancing and strengthening the training of all police officials, including non-commissioned officers, the Government should give consideration to requesting assistance from the Office of the High Commissioner for Human Rights to train police officials

(m) Given the numerous reports of inadequate legal counsel provided by ex officio lawyers, measures should be taken to improve legal aid services

(n) Legislation should be amended to allow for the presence of legal counsel in the first 24 hours of detention prior to the issue of an arrest warrant, moreover, police need to be issued guidelines on informing criminal suspects of their right to defence counsel

(o) The Forensic Institute should be placed under the exclusive jurisdiction of the Ministry of Health, independent of the Ministry of the Interior and the Ministry of Justice. All forensic doctors should be properly trained in identifying the sequelae of physical torture or ill-treatment. The examinations of medical doctors selected by the detainees should be given weight in any court proceedings (relating to the detainees or to officials accused of torture or ill-treatment) equivalent to that accorded to officially employed doctors having comparable qualifications. Protocols should be established to assist forensic doctors to ensure that the medical examination of detainees is comprehensive. Medical certificates should never be handed to the police or to the detainee while in the custody of the police, but should be made available to the detainee once out of their hands and to his or her lawyer immediately

(p) The Ombudsman should be granted powers to sanction any official who refuses to cooperate with the investigation of a complaint. The Office of the Ombudsman should be provided with the necessary financial and human resources to carry out its functions. A public awareness campaign should be established to make the public at large aware of the role that the Office can play in investigating complaints of police abuse
